MINUTES
OF THE
PROCEEDINGS
AT A
COURT-MARTIAL,

Assembled to inquire into the CAUSE of the LOSS of

His MAJESTY's late Ship *ARDENT*.

TAKEN BY

GEORGE JACKSON, Esq;

Judge-Advocate of his Majesty's Fleet.

Published by ORDER of

THE RIGHT HONOURABLE THE LORDS COMMISSIONERS

OF THE ADMIRALTY.

LONDON:

Printed for W. STRAHAN; and T. CADELL, in the Strand.

MDCCLXXX.

[Pr. 2s. 6d.]

MVSEVM
BRITANNICVM

CONTENTS.

ORDER for holding the Court, - - - - Page 2
Captain Boteler's *Letter, dated* Alençon, 10*th* Sept. 1779, 3
Captain Boteler's *Narrative,* - - - - 5
Evidence of Lieutenant Charles William Paterſon, - - 6
——— *of Lieutenant* James Kirkland, - - 18. 48
——— *of* James Primroſe Maxwell, *Secretary to* Admiral Pye, 28
——— *of Lieutenant* Richard Willis, - - - 29
——— *of* Robert Roſs, *Captain of Marines,* - - 35
——— *of* Teeling Caſſidy, *Lieutenant of Marines,* - 41
——— *of* John Williams, *Lieutenant of Marines,* - - ib.
——— *of* Robert Waller, *Maſter's Mate,* - - 42. 49
——— *of* William Mules, *Maſter's Mate,* - - 50
——— *of* William Sherbrook, *Purſer,* - - - 51
——— *of* Joſeph Regnier, *Midſhipman,* - - - 52
——— *of* John Burgeſs, *Midſhipman,* - - - 54
——— *of* James Sims, *Corporal of Marines,* - - 59
——— *of* William Murray, *Midſhipman,* - - - 63
——— *of* Archibald M'Intyre, *Gunner,* - - 66
——— *of* Richard North, *Boatſwain,* - - - 67
Captain Boteler's *Defence,* - - - - - 74
Sentence of the Court, - - - - - 90

CONTENTS.

ORDER for bailing the Court, - - - - - Page 2
Captain Boteler's Letter, dated Alington, 10th Sept. 1779, 3
Captain Bayley's Narrative, - - - - - 5
Evidence of Lieutenant Charles William Pasteur, - - 6
——— of Lieutenant James Rutland, - - - 18, 43
——— of James Principle Maxwell, Secretary to Admiral Byron, 29
——— of Lieutenant Richard Williams, - - - 29
——— of Robert Rob, Captain of Marines, - - 35
——— of Thetford Cadby, Lieutenant of Marines, - 41
——— of John Williams, Lieutenant of Marines, - ib.
——— of Robert Waller, Major of Marines, - - 42, 49
——— of William Nicholas, Major of Marines, - - 50
——— of William Sherbrook, Purser, - - - 52
——— of Joseph Register, Midshipman, - - - 52
——— of John Burgess, Midshipman, - - - 54
——— of James Sims, Corporal of Marines, - - 59
——— of William Murray, Midshipman, - - - 62
——— of Archibald M'Intyre, Cooper, - - - 66
——— of Richard Phrip, Drummer, - - - 67
Captain Boteler's Defence, - - - - - 74
Sentence of the Court, - - - - - 90

MINUTES of the PROCEEDI

AT A

COURT-MARTIAL,

Assembled the 2d of *March* 1780, on Board His MAJESTY'S Ship the VICTORY, in *Portsmouth*-Harbour,

To inquire into the CAUSE of the LOSS of

His MAJESTY's late Ship *ARDENT*.

PRESIDENT,

John Evans, Esq; Rear Admiral of the White.

PRESENT,

Captain *John Carter Allen*,
John Dalrymple,
John Cleland,
Samuel Thompson,
John Neale Pleydell Nott,
Honourable *Keith Stewart*,
Captain Sir *Digby Dent*,
John Montray,
Charles Fielding,
Sir *Charles Douglas*, Bart.
Samuel Granston Goodall,
Benjamin Caldwell.

CAPTAIN PHILIP BOTELER, late Commander of the *Ardent*, and the other Officers, and such of her Crew as were in Attendance, were called.

rder for the Trial read, and is as follows:

the Commiſſioners for executing the Office of Lord High Admiral of Great Britain *and* Ireland, *&c.*

WHEREAS Captain *Philip Boteler*, Commander of his Majeſty's late Ship the *Ardent*, acquainted us, by his Letter to our Secretary, dated at *Alençon* the 10th of *September* laſt, that on the 17th of the preceding Month the ſaid Ship had been taken in the Channel off *Plymouth*, by ſome *French* Ships of War which he had ſuppoſed to be part of Sir *Charles Hardy*'s Fleet: And whereas we think fit that an Inquiry ſhall be made, by a Court-Martial, into the Cauſe and Circumſtance of the Capture of the ſaid Ship *Ardent*, and that her Officers and Company ſhall be tried for their Conduct upon that Occaſion; and have, with that View, ordered the ſaid Captain *Boteler*, with the Officers and Petty Officers, whoſe Names are mentioned on the other Side hereof, and any others who can be conveniently collected, to repair immediately to *Portſmouth*; we ſend you herewith Captain *Boteler*'s above-mentioned Letter, together with a Journal of the Proceedings of the ſaid Ship before and at the Time of her being taken as aforeſaid, ſigned by Lieutenant *James Kirkland*, who was Third Lieutenant of her; and do hereby require and direct you, as ſoon after Captain *Boteler* and the ſaid Officers and Petty Officers ſhall arrive at *Portſmouth* as conveniently may be, to aſſemble a Court-Martial; which Court (you being Preſident) is hereby required and directed to inquire into the Cauſe and Circumſtances of the Capture of the ſaid Ship *Ardent*, and to try her Officers and Company for their Conduct upon that Occaſion accordingly. Given under our Hands the 23d of *February* 1780.

SANDWICH.
LISBURNE.
R. MAN.

To *John Evans*, Eſq;
Rear Admiral of the White, *&c.*
at *Portſmouth*.

By Command of their Lordſhips,
Phil. Stephens.

Lieutenant *Charles William Paterſon*, Firſt Lieutenant.
James Kirkland, Third Ditto.
Robert Wallis, Fourth Ditto.
Captain *Robert Roſs*, Captain of Marines.
Lieutenant *Teeling Caſſidy*, } Lieutenants of Marines.
John Williams, }
Mr. *William Sherbrooke*, Purſer.
Joſeph Regnier, Midſhipman.

Captain *Boteler*'s Letter, referred to in the ſaid Order, alſo read, and is as follows:

SIR, *Alençon*, 10th *September*, 1779.

YOU will pleaſe to acquaint their Lordſhips, that on the 17th of *Auguſt*, being then off *Plymouth*, I ſaw a large Fleet to the W. S. W. of us, which I took to be Sir *Charles Hardy*'s Fleet. What ſtrengthened me in that Opinion was, a Frigate being in Shore following with *Engliſh* Colours (which proved to be afterwards a *French* Frigate, called *The Gentile*); as ſuch bore away for them. About Ten o'Clock made the private Signal, which I thought was anſwered by one of the Ships. We had now got about the Center of them. Saw Three large Ships bearing down upon us; upon which I brought the Ship to, as I could not diſtinguiſh which was the *Victory*, not having the leaſt Idea of a *French* and *Spaniſh* Fleet, eſpecially being off one of our Ports. About Half after Ten o'Clock, a Frigate to windward hoiſted *French* Colours, and fired a Shot. At this Time the whole Fleet was round us. However, I thought, by making Sail, there might be a Chance of getting in Shore. As ſuch, made all the Sail I could; but ſoon found all my Efforts in vain, as I was cut off on every Quarter; therefore I brought to, the Frigates at this Time firing their Broadſides, which I returned by a very briſk Fire. By this Time Two large Ships, the *Corona* of 84 Guns, and *St. Michel* of 64, were got pretty near us. A great Confuſion in the Ship, as I had not had Time to diſciplline

the People, near four hundred never having been at Sea; as ſuch, knew nothing of the Uſe of a Gun. Though all my Officers did all in their Power, found it impoſſible to do any thing with ſuch ſuperior Force, even if I had been ever ſo well manned. But it was far otherwiſe with me; I had neither Time given me to exerciſe, make Wads, or any other Preparation neceſſary to make a proper Defence againſt ſo ſudden Attack of an Enemy. However, I can aſſure their Lordſhips, that every Thing was done as could be, both by me and Officers; but to reſiſt the whole Fleet was impoſſible. As ſuch, after loſing ſeveral of my People, and the two before-mentioned Ships coming up, and my Ship's Company in the confuſed State I have already deſcribed, found I could do no otherwiſe than ſurrender to the Fleet, which would not have been ſo ſoon done had ſhe been properly manned for Action. I am, SIR, with great Reſpect,

Your humble Servant,

PH. BOTELER.

The Members of the Court and Judge-Advocate were ſeverally ſworn, according to Act of Parliament.

The Journal of Lieutenant *Kirkland*, tranſmitted in the Order for aſſembling the Court, then read. (SEE HIS EVIDENCE.)

Notice given, that all Perſons to be examined as Evidence do withdraw.

The Judge-Advocate acquainted the Court, he had received a Letter from the Secretary of the Admiralty, in which were incloſed two Letters from *James Hall*, late Maſter of the *Ardent*, repreſenting his Inability to attend to give Evidence, and that the ſame was confirmed by Certificate from Mr. *William Sharp*, an eminent Surgeon in *London*, whoſe Care he is under.

Captain *Boteler* was then ordered by the Court to give a Narrative, containing an Account of the Occurrences on board the *Ardent* on the Day on which ſhe was taken by the Enemy.

He

He delivered a Paper to the Judge-Advocate, which he read, and is as follows:

GENTLEMEN,

I STAND before this Court, according to the Diſcipline of the Navy, to anſwer for the Loſs of the King's Ship I had the Honour to command. I truſt, under the Circumſtances that attended her falling into the Enemy's Hands, I had no Means left of preſerving her.

The Letter I wrote to the Secretary of the Admiralty, ſoon after my being landed in *France*, in Date the 10th of *September* 1779, which Letter is before the Court, relates exactly the Manner in which the *Ardent* was taken by the Enemy on the 17th *Auguſt* preceding. I have here very little to add; but ſubmit myſelf, Gentlemen, moſt willingly, to your Judgment and Deciſion.

I might dwell upon the State in which the *Ardent* was hurried out of Port, which nothing but the very critical Exigency of the Times could have warranted; but that will appear to the Court in the Courſe of their Examination.

I have only to hope it will never be the Lot of any Member of this Court to have the Command of a Ship in a ſimilar one.

As ſoon as I got to Sea, I found it abſolutely neceſſary, for the Preſervation of the Maſts, to put into *Torbay* to ſecure them; I lay there a whole Day, but had not the leaſt Intimation of an Enemy's Fleet being in the Channel, and ſailed at Midnight, in Expectation of joining Sir *Charles Hardy*'s Fleet, perhaps that Morning. In that Confidence, I was in the Midſt of the Enemy's Fleet before I was aware. The Surpriſe naturally brought on a Confuſion; and being ſurrounded on all Sides by the Enemy's Ships, and no Chance of eſcaping, there remained no Alternative, but ſurrendering to ſuch ſuperior and unequal Force.

But I muſt here beg leave to do that Juſtice to my Officers that is due to them, in ſaying, that they exerted themſelves as much as our Situation admitted of, and gave me every Aſſiſtance I had Reaſon to ex-

pect

ject from them; and I make no Doubt, had our Situation with the Enemy allowed of our extricating ourſelves, the People would have recovered from the Confuſion they were thrown into, and I ſhould have had no Reaſon to be diſſatisfied with their Good Will.

Pat. Bowlan.

Charles William Paterſon, *Firſt Lieutenant of the* Ardent, *ſworn.*

Q. Relate what you know concerning the Loſs of the Ship *Ardent*.

A. On the 17th of *Auguſt*, in the Morning, I had the Morning-watch; I relieved the Fourth Lieutenant at Four o'Clock in the Morning; we then ſaw Three Sail to the Weſtward of us; we did not take much Notice of them then. About Seven o'Clock one ſtood acroſs us in Shore: we gave Chace to her; about Eight o'Clock came up with her, and boarded her; ſhe proved to be a Brig from *Norway*, bound to *Falmouth*. Juſt as the Boat was coming aboard again, we perceived a Sail upon the Larboard Beam, with her Courſes juſt out of the Water, ſtanding obliquely in Shore of us; ſhe ſtood athwart us in Shore; we ſuppoſed her to be a Two-decker; ſhe wore in Shore and ſtood out again. At the ſame Time we ſaw a Frigate upon our Starboard Quarter, in Shore of us, coming down with *Engliſh* Colours; we made Sail firſt after the Frigate that ſtood athwart us in Shore, and came out again and wore; we did not make ſufficient Sail to come up with her, ſo made the private Signal to her. The Frigate upon our Starboard Quarter came faſt up with us, and we were coming up with the Ship that we were chaſing; upon which we ſhortened Sail for her, and reefed our Topſails and laid to. While we were laying to, a Frigate from the S. E. Quarter bore down out of a Line (it appeared to me) of Line of Battle Ships,—the weathermoſt Part of the Fleet; we waited for her; ſhe came down with a blue Enſign; we made the private Signal to her, but did not perceive it anſwered. When ſhe came within

Shot of us, ſhe hauled down the blue Enſign, hoiſted *French* Colours, and fired a Shot at us. Captain *Boteler* then gave Orders for all Hands to Quarters; upon which I went down upon the Main-deck and got my Quarters clear; the Ship was wore, and we fired our Starboard Broadſide upon the Frigate that was coming down upon our Starboard Quarter. At that Time I was ſent for by Captain *Boteler*, who took me into the Stern-gallery to ſhew me the Veſſels, which were Four Frigates coming up under our Stern, Three on our Quarter, and aſked me what I thought. I told him, I thought we might make Sail and endeavour to get off; that the Frigates were the nearer Veſſels to us then. I ſaw one of them luff up to give us her Broadſide; and by doing ſo, they loſt Ground, while we gained it. We made Sail, ſet Topgallant-ſails, Mainſail, and Fore and Main-Topmaſt-ſteering-ſails; the Foreſail was ſet before, and ſtood in Shore. I received the Captain's Orders to give Directions for the Guns not to be fired any more; and after making Sail in Shore for about Half an Hour, the Captain aſked me, pointing to Three large Ships that were coming down upon our Starboard-bow, what I thought of it. I told him, that I ſaw no Probability of our eſcaping. The Captain aſked me, if we ſhould ſtrike. I told him, as I did not ſee any Probability of our eſcaping, I thought it was as good to ſtrike. Upon which we ſhortened Sail and ſtruck, and ſurrendered to the *Corona* and *St. Michel*, and Four Frigates.

Court.

Q. When firſt you ſaw theſe Ships in the Morning, was the *Ardent* to Windward or to Leeward of them?

A. We were to Windward.

Q. Did you run any further to Leeward, after you made the Signal to know each other?

A. Yes.

Q. And the Signal not anſwered by thoſe Ships?

A. By the ſingle Ship that we made it to,—the Ship that ſtood athwart us in Shore, and wore and ſtood out again.

Q. Then ſhe did not anſwer it?

A. No.

A. No.

Q. And after that, did you edge away, and ſtand to them?

A. Towards the Fleet.

Q. How was the Wind then?

A. The Wind was a little to the Northward of the Eaſt.

Q. What Diſtance was you then from the neareſt Land you could, with a full Sail upon a Wind, fetch, when you firſt ſaw the Frigate, and it did not anſwer the Signal? and what Land was it you could fetch?

A. Between Two and Three Leagues from Land to the Weſtward of *Plymouth*.

Q. What Headland was it?

A. I do not recollect.

Q. In what Situation was the *Ardent*, with reſpect to the Enemy's Fleet, when you made the private Signal which was not anſwered?

A. She was to Windward of the whole of them.

Q. Was not the Ship ordered to be cleared till the firſt Frigate hoiſted her Colours and fired?

A. She was before that.

Q. You ſaid in your Evidence, that you then went down to clear the Main-deck, upon Captain *Boteler*'s Orders?

A. I did.

Q. Were Orders given before?

A. Yes, in the Morning.

Q. At what Time?

A. Between Eight and Nine.

Q. At what Time did the Frigate fire?

A. About Ten o'Clock; I cannot be certain.

Q. At what Diſtance was the Ship from you to which you firſt made the private Signal?

A. Not quite a League.

Q. What Diſtance was you from the Body of the Enemy's Fleet when you firſt reefed your Topſails?

A. I think about Two Leagues.

Q. What Diſtance were the Two Line of Battle Ships when you ſtruck, and had they fired at you?

A. I do not think they were within Gunſhot, nor had they fired at us.

Q. Did you ſail faſter or ſlower than they did, and in what Proportion?

A. We ſailed ſlower than they; I cannot ſay in what Proportion.

Q. About what Rate?

A. The Ship did not appear to me to go well that Day.

Q. How were the Enemy ſituated between you and the Land when you ſtruck?

A. The Enemy were within Shore of us.

Q. Where were you freeſt from the Enemy's Ships to have paſſed on to Shore?

A. Three were upon our Starboard-bow, and Three *Spaniards* to Leeward:—there was an Opening with a full Sail between thoſe Two.

Q. What Diſtance was you from the Land when you ſtruck?

A. I ſuppoſe Four or Five Leagues.

Q. What Diſtance might thoſe *French* and *Spaniſh* Ships be aſunder where the Opening was?

A. I think not a Mile.

Q. Could either of thoſe *French* or *Spaniſh* Ships have run on board of you, if you had made for the Shore?

A. I think they could have run on board of us.

Q. In caſe you had kept cloſe to your Wind, could you have weathered both thoſe Groups of Ships?

A. No.

Q. Then you was cloſe to the Wind?

A. No; we could not have ſet our Studding-ſails, if we had been cloſe upon a Wind.

Q. What was the Diſtance of the *Ardent* from thoſe Groups of Ships laſt alluded to, or the neareſt of thoſe Ships?

A. More than Gunſhot from them.

Q. Can you recollect how much more than Gunſhot?

A. I cannot; I depend upon my Memory for the whole.

Q. Did thoſe Groups of Ships appear further from one another than they were from the *Ardent*?

A. They were nearer to one another than they were to the *Ardent*.

Q. Do you mean thoſe two ſeparate Groups of Ships, excluſive of the *Corona* and *St. Michel*?

A. No; the *Corona* and *St. Michel* were a Part of one of the Groups.

Q. Did thoſe Groups appear to you to be Ships of the Line, or Frigates, or partly of each Denomination?

A. Ships of the Line.

Q. Before the ſecond Time you made the private Signal, you ſaid you brought to, and took in a Reef of the Topſails; were thoſe Reefs let out; and if ſo, when were they let out?

A. They were not let out.

Q. When you attempted to eſcape, did you make all the Sail you could?

A. Except thoſe Reefs in the Topſails, and the lower Studding-ſails.

Q. Could not you carry your Topgallant Studding-ſails?

A. No; there was too much Wind.

Q. What Reefs had you in?

A. One in each Topſail.

Q. When you firſt made the private Signal, was the neareſt Ship of the Enemy within ſuch a Diſtance, and did the Weather permit you plainly to diſcern any Signal ſhe might have made, without your bearing away farther?

A. Yes; ſhe was near enough to perceive our Signal, and for us to ſee any Signal ſhe made.

Q. Was it not at that Time in your Power to have eſcaped, if you had hauled your Wind?

A. I think it was.

Q. How long did it continue in your Power after that to have eſcaped?

A. I ſuppoſe near an Hour.

Q. Did

Q. Did your Topſails ſtand very high, owing to their being cut too deep, although the firſt Reef was in each of them?

A. Yes, they did.

Q. Were they new or old Sails?

A. New Sails.

Q. Would they have ſtood ſlack if they had no Reefs in them?

A. Yes.

Q. Did they hoiſt cloſe up with the Reef in them?

A. Yes.

Q. Then they were at firſt cut too deep?

A. Yes, they were.

Q. Were the colours ſtruck after reefing, before you made Sail?

A. Yes, the Enſign only.

Q. By whoſe Direction was it ſtruck?

A. I do not know.

Q. Was the Enſign hoiſted again?

A. No.

Q. Do you know who ſtruck it?

A. I do not.

Q. Were the Colours given under the Direction of any particular Perſon on the Poop?

A. We had not had Time to regulate Things in that Manner; they were not.

Q. Had you any Spare Colours bent to the Enſign or Peek-halyards?

A. None that I know of.

Q. Had you, as the Firſt Lieutenant, the quartering of the Men?

A. I had.

Q. Were they quartered before you met with theſe Ships?

A. They were.

Q. Were the Men called over to their Quarters before you met the Enemy's Ships.

A. Yes.

Q. Do you think the Ship could have eſcaped after making the private Signal the Second Time?

A. I cannot ſay.

Q. At what Time did you hear of the Enſign being ſtruck; and how long was it after that before ſhe was ſurrendered?

A. The Enſign was ſtruck juſt after we had fired the firſt Broadſide, when I was ſent for by Captain *Boteler*.

Q. What paſſed between you and Captain *Boteler* upon that?

A. I heard the Captain, when I came upon the Quarter-deck, enquiring who had ſtruck the Enſign: Nothing particular paſſed between him and me about that: Then he aſked me about the Frigates, as I before mentioned.

Q. Did he not expreſs any Surpriſe at the Enſign being ſtruck without Orders?

A. Yes, he expreſſed his Surpriſe at its being ſtruck.

Q. How long was it after the Enſign was ſtruck, before ſhe ſurrendered?

A. About Half an Hour, or ſomething more.

Q. Before you ſtruck to the Enemy, what Damage had the Ship received in her Maſts, Sails, and Hull?

A. She had only her Jibb-halyards ſhot away.

Q. Was that ſpliced again?

A. It was knotted, and the ſail ſet immediately.

Q. Did any of the Enemy's Ships anſwer the private Signal you had made?

A. Not that ever I ſaw.

Q. What Situation was the Ship in when you was ſent for by the Captain on the Quarter-deck; was ſhe lying to, or under what Sail?

A. She was under Three Topſails and Foreſail; I think the Topgallantſails were looſe, but not ſet.

Q. Was her Head to the Shore or from the Shore?

A. To the Shore.

Q. Do

Q. Do you think it poſſible for the Ship to have reached the Shore, at the Time you ſurrendered?

A. It was not poſſible, ſhe was cut off from the Shore.

Q. Do you think every Thing poſſible was done for preſerving the King's Ship *Ardent* from falling into the Hands of the Enemy?

A. After we found our Miſtake, I believe there was.

Q. At what Period did you find your Miſtake?

A. Not till the Frigate fired at us.

Q. Did the Captain, other Officers, and Ship's Company, do their Duty during the Time the Enemy were in Sight?

A. I think they did.

Q. Was there any great Degree of Confuſion in the Ship, and what was that owing to?

A. Yes, owing to its being ſuppoſed they were the *Engliſh* Fleet, and finding it was the Enemy.

Q. How long did that Confuſion continue?

A. Nearly till we ſtruck; we were never ſettled after.

Q. Did it continue ſo as materially to interrupt the Operations of the Ship?

A. Yes.

Q. Did you make Sail briſkly?

A. No, not very briſkly.

Q. Were the Men obedient to Orders?

A. They were, as far as they were able in that Situation.

Q. When the Men were called to their Quarters, were the Guns loaded for Action?

A. I believe they were, I do not know poſitively.

Q. Were thoſe Guns you commanded upon the Upper-deck loaded?

A. Yes.

Q. Was there any Hindrance to the Action being continued, from the Want of Powder being filled, or any other Cauſe?

A. Yes, there was; we waited for Powder ſome Time.

Q. How

Q. How many Broadſides were fired?

A. One, and the other Guns as they could be brought to bear, till the Captain gave Orders to ceaſe firing.

Q. What was the Quantity of Powder filled; or was there any filled before you ſaw the *French* in the Morning?

A. There was ſome, but I do not recollect the Quantity.

Q. How many Rounds?

A. I do not recollect.

Q. Did you ever give any Orders to the Gunner, having received them from the Captain, about filling Powder?

A. Yes.

Q. When did you give thoſe Orders?

A. After we left *Spithead*; in the Middle Watch we filled Powder.

Q. Did the Captain ſpecify any Quantity to be filled?

A. None particularly:—As much as could be filled in that Watch.

Q. Did they continue filling Powder during the whole of that Watch?

A. I believe they did.

Q. How long had the *Ardent* been manned before ſhe was taken?

A. Not quite a Week.

Q. Were there Wads enough made?

A. There were not enough.

Q. What was that owing to?

A. Want of Time to make them.

Q. Was the Ship's Company ever exerciſed at their Quarters?

A. Yes; two or three Times.

Q. While the Ship lay at *Torbay*, were any of the People employed in making Wads?

A. No; we were employed in ſetting up the Rigging.

Q. If you had had more Wads, or more Powder filled, do you think it would have contributed to the better Defence of the Ship.

A. No; I do not think it would.

Q. Were any Ships of the *Britiſh* Fleet, that you know of, in Sight at that Time?

A. No.

Q. When the private Signal was made a firſt and ſecond Time, and not anſwered, did it give you any Suſpicion of its not being the *Engliſh* Fleet?

A. Not to me.

Q. How do you account for its not then giving you any ſuch Suſpicion?

A. We had no Intimation of an Enemy's Fleet being there, when we were at Anchor in *Torbay*; therefore I ſuppoſed it to be the *Engliſh* Fleet; and from that did not ſo much attend to the anſwering the Signal.

Q. Did you look at the Fleet with a Spying-glaſs?

A. Yes.

Q. Was you upon the Quarter-deck when the private Signals were made?

A. Yes.

Q. Did the Captain or any of the other Officers expreſs Surpriſe at their not being anſwered?

A. Not that I recollect.

Q. Did you obſerve at any Time Flags being hoiſted on board the Enemy's Ships?

A. Yes.

Q. Could you diſtinguiſh what thoſe Flags were?

A. The Frigate that fired at us was coming down with a blue Flag with a white Croſs at the Foretopgallantmaſt-head.

Q. Did you obſerve any Signals on board any other of the Enemy's Ships?

A. Yes; but not near enough to diſtinguiſh them.

Q. What Sort of Weather had you from the Time of ſeeing the Frigate in the Morning, to the Time the *Ardent* ſtruck?

A. Hazy Weather.

Q. The whole Time?

A. Juſt after we ſaw the Frigate in the Morning it began to be hazy.

Q. Did

Q. Did you hear any firing of Guns in Shore?

A. Yes.

Q. What did you imagine that to be?

A. I did not know what it was.

Q. Did you ſee nothing?

A. Nothing but the Ship we were chaſing and the Fleet without us.

Queſtions from Captain Boteler.

Q. Did not the Third Lieutenant, Mr. *Kirkland*, come upon the Quarter-deck, to the firſt Officer, and ſeem to be much ſurpriſed that the private Signal was not hauled down, it having been anſwered?

A. The Third Lieutenant was on the Quarter-deck when we were looking out for the anſwering of the Signal; he applied himſelf to me, and ſaid it was anſwered, and deſired me to haul it down. I ſaid, I had the Captain's Orders to look out for it, and not ſeeing it, that was the Reaſon of my not ordering it to be hauled down.

Q. Was it not your full Opinion, from the Time of my ſeeing that Fleet, to the Time of the Frigate's firing upon us, that it was the *Engliſh* Fleet?

A. Yes.

Q. Do you remember at the Time of my firſt fitting that Ship out, what Numbers and various Sorts of Men I had on board her? and that we had the ſhifting of them backwards and forwards often?

A. I remember we had a vaſt Variety of Men, but I cannot ſpeak to the Number; we received from every Tender that came in.

Q. Were there not great Diſcharges?

A. Yes.

Q. Did I at any Time, from the Time of my being commiſſioned to the *Ardent*, to the Time of her being taken, neglect my Duty in any one Point?

A. Never, that I know of; far to the contrary.

Q. And for the ſhort Time that I did command her, did I not put

every Thing in the greateſt Forwardneſs that an Officer and Seaman could do?

A. Yes.

Q. During the Action, was there any Appearance in me of not doing my Duty, or exerting myſelf with the Ship's Company I had to command?

A. None that I know of.

Q. Do you think that the Ship's Company was, from the ſhort Time I had to manœuvre them, in a proper State to bear an Action?

A. No.

Q. From thoſe Appearances, do you ſuppoſe it poſſible that I could have done more than I did with the Ships I had to encounter?

A. No.

Q. Or that I did not exert myſelf to get that Ship off, if poſſible?

A. You did.

Q. Therefore, in your Opinion, his Majeſty's Ship *Ardent*, which I had the Honour to command, was not thrown away to the Enemy?

A. I do not think ſhe was.

Q. Do not you think that there is the greateſt Diſadvantage in any Captain's going to Sea, and falling in with an Enemy, in the ſhort Time I commanded her, not knowing hardly an Officer or a Man on board?

A. I ſhould ſuppoſe ſo.

Withdrew.

Enquiry being made for the Second Lieutenant, Captain Boteler *informed the Court that he had been left at* Portſmouth, *before the* Ardent *ſailed, to attend a Court-martial, which was a great Diſadvantage to him.*

Court cleared.

In a ſhort Time, Captain Boteler *was brought in, and Audience admitted.*

James Kirkland, *Third Lieutenant, ſworn.*

Q. Give an Account to the Court of all you know from the firſt ſeeing the Enemy's Ships, on the 17th *Auguſt*, till the Time the *Ardent* ſtruck.

A. As I cannot rely upon my Memory, I muſt beg the Indulgence of referring to my Journal.

He delivered a Copy to the Judge Advocate, who read it to the Court as follows.

Extract from the Ardent's *Journal of the 17th of* Auguſt, 1779.

" The firſt Part light Airs and Calms; employed ſetting up the Topmaſt Rigging. At Half paſt Eleven, P. M. weighed and came to with a light Breeze from the Northward; ſet Topgallant-ſails, Jib, and Stay-ſails. At Seven A. M. ſaw a Sail to the Weſtward, ſet Steering-ſails, and gave chaſe (the Wind was then about E. N. E.) About Eight, fired a Shot and brought to the Chace, which was examined by Lieutenant *Kirkland*, and proved to be from *Norway* bound to *Falmouth*.

" At the Time of examining the *Dane* there was ſeen ſeveral Sails to the Southward, ſome only their Topſails out of the Water, but their Sails very ſquare, and which were conſidered chiefly to be Ships of the Line, and the general Opinion that it was the *Engliſh* Fleet.

" Made ſail, and bore away for the neareſt Ship. About Nine, we came within the Obſervation of Signals, and made the private Signal, a *Dutch* Jack at the Fore and a *Spaniſh* Pendant at the Maintopgallantmaſt-head. At this Time there could not above Three of the Ships obſerve our Signal, we therefore made more ſail, and kept running down, having hauled down our private Signal on its not being anſwered.

About Half paſt Nine, it blowing freſh, it was thought adviſeable to ſhorten Sail and take in One Reef of the Topſails, as we might have got too far to Leeward, and would have occaſion to work up to the Admiral, and likewiſe to allow the neareſt Ship (which was to Windward) to come down and ſpeak us.

" For which purpoſe, after having reefed and hoiſted the Topſails, we brought to with the Maintopſail to the Maſt, having again made the private Signal.

" About Fifty Minutes paſt Nine, we could perceive Signals from upwards of Forty Sail, but not one anſwering ours. On our firſt bearing down we had beat to Quarters, but having occaſion for the People, we beat the Retreat, and being ſtill of Opinion that it was the *Engliſh* Fleet.

" At Ten the afore-mentioned Ship that was coming down before the Wind was obſerved to have a Blue Enſign and a Blue and White Pendant. At the ſame Time there was coming down ſeveral Sails, all with different Signals.

" A Quarter paſt Ten, the afore-mentioned Ship having got within Gunſhot, hauled down the Blue Enſign, hoiſted *French* Colours, and fired a Shot; we were then well convinced that it was the Enemies Fleet.

" Captain *Boteler* then aſked, What was proper to be done? My Anſwer, To make all the Sail we could, haul in for *Falmouth*; or if we could not make a Port, to run the Ship on Shore.

" The Helm was immediately ordered a-Weather, and the Fore Clew Garnets let run.

" During our veering (as we had been laying to with our Head to the Southward) the Frigate, together with another that had got within Gunſhot, took the Opportunity and raked us, by which we had ſome Men killed and ſome wounded.

" The People were then ordered to their Quarters, which were clear. I anſwer for the Upper-deck, as I was there ſtationed. It was ſeldom we could get our Guns to bear, as the Frigate kept as much in our Wake as poſſible; but when we did, the Men behaved with great Spirit, and fired briſkly.

" Three Quarters paſt Ten, the Enſign was ſtruck, but by whoſe Order I have not learnt. Having received Orders both from Firſt Lieute-

nant and Captain to ceaſe firing, I went aft, and aſked of Captain *Boteler*, If it was by him the Colours were ordered to be ſtruck? His anſwer was, No; but that ſome Perſon on the Poop had done it of his own accord.

" This Report cauſed ſome Confuſion, as it was ſuppoſed we had ſurrendered.

" At the ſame Time it was adviſed by me, and I believe the Firſt Lieutenant and Maſter (the Pendant being ſtill flying, and on a Suppoſition that the Colours might have been ſhot away), to ſet Topgallant-ſails, Jib-ſtayſails, and Steering-ſails, and to endeavour as firſt propoſed. In making Sail, the People ſhewed the greateſt Alertneſs.

" As we had all the former Time been only under our Topſails and Foreſail, by Eleven there was Four Frigates, Two on each Quarter, keeping a pretty briſk Fire, though very near the greater Part of their Shot fell ſhort.

" After having ſet our Mainſail (ſtanding in for the Land about N. N. W. the Wind nearly on the Beam) the Ship was going about Nine Knots; but from being badly ſteered, or the Enemy's Ships going better, there was coming up Two Line of Battle Ships. On which Account Captain *Boteler* aſked, If it was not beſt to heave to and ſurrender? For my Part, I objected, as did every Officer preſent, except the Captain of the Marines, who gave it as his Opinion that it was impoſſible to eſcape.

" It is certain we were in a Manner ſurrounded. The *Spaniſh* in a Line to Leeward, about Two or Three Leagues; the *French* to Windward, and ſeveral of their Ships nearer the Land than we coming down.

" Still we had a great Probability of making our Eſcape, as the Ship was no Way diſabled either in Hull or Rigging, the only Rope ſhot away was the Jib-halyards, which was ſoon ſpliced, and the Sail again hoiſted.

" However Captain *Boteler* thought it proper, and ordered Sail to be ſhortened, the Pendant to be ſtruck, and to heave to. It was about Noon, and *Plymouth* bore N. N. E. Five or Six Leagues.

" There was killed Five or Six, and Seven or Eight wounded.

" The Ships that engaged were the *Juno* of Forty Guns; the *Genteel*, Forty; the *Servilliant*, Forty; and the *Bellone*, Thirty-ſix. The latter fired Two Broadſides after we had ſtruck and ſhortened Sail. The *Corona* of Eighty, and the *St. Michel* of Sixty-four, were pretty near within Gunſhot.

J. KIRKLAND, 3d Lieut."

Q. When you firſt made the private Signal to the Frigate that was near you, and ſhe did not anſwer it, what was the Reaſon given for bearing down?

A. I do not know of any Reaſon. It was Captain *Boteler's* Orders to keep running down.

Q. What Way was the *Ardent's* Head then?

A. S. W.—The Wind was about E. N. E.

Q. Had you wore then and kept upon a Wind, ſhould you not have been to Windward of all the Enemy's Ships, except that Frigate?

A. I believe we ſhould, to the beſt of my Recollection of the Situation of the Ships at that Time.

Q. What Diſtance was you from the Land when you firſt made the private Signal?

A. About Four Leagues.

Q. What Land was it?

A. We were abreaſt of *Plymouth*.

Q. Was the Sound open to you?

A. I ſuppoſe it was.

Q. What was the Head-land you allude to?

A. The Ram Head, which then bore about N. W.; but I did not ſet it.

Q. Then by your edging away with your Head to the Southward you increaſed your Diſtance from the Land?

A. Yes.

Q. How long did you edge away before you made the private Signal the ſecond Time?

A. The

A. The Signal the ſecond Time was made immediately before or immediately after the Time of reefing the Topſails.

Q. How far did you edge away before you reefed your Topſails?

A. I ſuppoſe Three or Four Miles nearer towards the Body of the Enemy's Fleet in the S. W. Quarter.

Q. You then made the private Signal a ſecond Time?

A. Yes.

Q. Was that private Signal anſwered?

A. No.

Q. Did you at any Time think it was anſwered?

A. No, I cannot ſay I did; I never ſaw but one *Dutch* Jack in the whole of the Enemy's Fleet, and that was at the Mizen-peak of one of their Ships.

Q. Were you quartered upon the Main-deck?

A. We were not then at our Quarters; my Quarters were upon the Main-deck.

Q. At any Time did you come upon the Quarter-deck, and aſk the Firſt Lieutenant why he did not haul down the private Signal, for that it was anſwered?

A. No; I do not recollect any ſuch Thing.

Q. Did the Firſt Lieutenant ſay to you, that the Captain ordered him to look out for this Signal; and that he replied, he had not ſeen it anſwered, and therefore had not hauled it down?

A. No; I was looking for it myſelf.

Q. You did not ſay that to the Firſt Lieutenant?

A. No, nor any other Perſon.

Q. At no Time?

A. No.

Q. What Diſtance was you from the Body of the *French* Fleet when you reefed?

A. About Two or Three Leagues, to the beſt of my Recollection.

Q. When you ſurrendered, were any of the Enemy's Ships upon your Bows?

A. The

A. The Weathermoſt of the *French* Fleet were much farther to Windward than the *Spaniards* were to Leeward;—the *Spaniards* were in a Line to Leeward;—the headmoſt Ships of the *Spaniards*, I ſuppoſe, was within Two Leagues of the Land, to Leeward;—the *French* Fleet were to Windward, and at a greater Diſtance than the *Spaniards* to Leeward;—ſome of their Ships were nearer in Shore than we were.

Q. How far were the two Groups of Ships aſunder from each other?

A. I ſuppoſe Five or Six Leagues.

Q. How far off was the neareſt Ship to you upon your Weather-bow, and how far was the neareſt Ship to you upon your Lee-bow?

A. Upon our Lee-bow, the neareſt, which I ſuppoſed to be *Spaniſh*, was, I ſuppoſe, Two or Three Leagues.

Q. I mean when you ſurrendered?

A. Then the neareſt Ship was upon our Starboard-quarter.

Q. Were there no Ships upon your Starboard-bow?

A. Yes; but at a greater Diſtance; Two or Three Leagues, I ſuppoſe. The other Ships were upon our Lee-bow, ſtretching a Line in Shore, with their Starboard Tacks on board; they were about Five or Six Leagues, I ſuppoſe, aſunder.

Q. Do you ſuppoſe that in that Opening you could have fetched the Shore?

A. Yes.

Q. Without either of thoſe Ships running on board you?

A. I cannot ſay:—We had an opportunity of trying it.

Q. Do you think you could, if you had tried?

A. I think we might; there was no Ship athwart our Hawſe, nor cloſe upon our Bows.

Q. At the Time you ſurrendered, did you then diſapprove it, and think it adviſable that you ſhould try the Experiment?

A. Yes. I was then on the Starboard Gangway, and going to ſend up the Maintopmaſt-ſtuddingſail; I had ordered the Maſter's Mate, Mr. *Waller*, to go upon the Mainyard to receive it. At that Time the Maſter came forward to me on the Gangway, and deſired I would come

aft,

aft, for the Captain was propoſing to heave the Ship to, and ſurrender. I went aft accordingly, and found Captain *Boteler* and the Captain of Marines together with this Mr. *Waller*, whom I had deſired to go upon the Mainyard; he had ſtopped on the Quarter-deck, finding this Propoſal going forward. Captain *Boteler* aſked me, If I did not think it was beſt to heave to and ſurrender. I told him, No; that we had now got all our ſmall Sails ſet, except the Maintopmaſt-ſtuddingſail, which we were going to ſend up, which would give us an Advantage that we had not before. Having ſaid this to Captain *Boteler*, I went forward, in order to ſet the Maintopmaſt-ſtuddingſail; before I had got forward upon the Gangway, where the Studdingſail was ready to go up, there were Orders from the Quarter-deck to man the Clew-Garnets, haul the Courſes up, and to haul the Pendant down.

Q. You have alluded to two Groups of Shipping; one upon the Starboard and the other upon the Larboard Bow—Do you recollect how many Points upon the Starboard-bow the one Parcel was, and how many upon the Larboard the other?

A. The neareſt Ships to us were upon our Quarter; thoſe that were upon our Weather-bow were I ſuppoſe Four or Five Points; thoſe upon our Lee-bow were about Two or Three Points.

Q. Did you make all the Sail you could from the Enemy when you firſt diſcovered them to be one?

A. No. We ſet our Foreſail, and made no more Sail till the Enſign was ſtruck. After the Enſign was ſtruck, we then ſet our Topgallant-ſails, Jib, Stayſails, Studdingſails, and Mainſail. The Foreſtudding-ſail would not ſtand; the Foretopgallant-ſtuddingſail was ſet as much as ever the Maſt could bear.

Q. Do you know who ſtruck the Enſign?

A. No.

Q. Nor by whoſe Order it was ſtruck?

A. No.

Q. Was the Enſign ever hoiſted again?

A. No.

Q. Were

Q. Were the Halyards ſhot away?

A. I do not know; I was not aft upon the Poop.

Q. Did you ever know any Reaſon for the Enſign being ſtruck?

A. No; I aſked Captain *Boteler*; he ſaid ſome Perſon did it without his Orders, but who that Perſon was I know nothing about.

Q. Was the Ship in thorough Preparation for Battle, and capable of maintaining a running Fight for any Time?

A. I think that after the Sails had been all ſet, if the People had been ordered to their Quarters, they would have been ready on the Main-deck, where I was ſtationed, to have received any Ship that might have come alongſide, the Guns being all loaded, to the beſt of my Recollection, as far aft as the Mainmaſt. The only Thing that I know wanting was Wads.

Q. Do you know the Condition of the Lower-deck?

A. I do not know; I cannot judge of the Condition of the Lower-deck.

Q. Do you know if the Lower-deck Guns were ordered to be unlaſhed?

A. Yes.

Q. At what Time were they ordered to be unlaſhed?

A. During her veering, after the Frigate had fired a Shot.

Q. Were your Guns loaded when you ſtruck?

A. Thoſe where I was quartered were loaded. I was priming a Gun abreaſt of the Mainmaſt when I received Orders to ceaſe firing. The Man was awkward, and I was ſhewing him how to prime the Gun.

Q. Had you at any Time ſeen the People employed in making Wads?

A. Yes; at *St. Helens*.

Q. At different Times?

A. I do not recollect but once.

Q. How many Rounds were made?

A. I ſuppoſe there could not be above Two or Three Rounds: All the Gunner's Crew were employed one Forenoon.

Q. Had you a fixed Gunner's Crew?

A. Yes. I do not know they were rated, but they were named to aſſiſt the Gunner.

Q. What Sort of Men were they?

A. Some very good Men; Men that came out of the *St. Albans*, and had been in that Station in that Ship.

Q. You made no Wads at *Torbay*?

A. We might; but I do not recollect. The Gunner's Men were buſy from Sunriſe to Sunſet fleeting and ſetting up the Main-rigging, ſo that I ſuppoſe they could not be ſpared to make Wads.

Q. How was the Ship manned with reſpect to Seamen?

A. I ſuppoſe we had Two Hundred good Seamen in the Ship.

Q. How were the other Proportions of your Men?

A. The others were chiefly Landmen.

Q. Were they ſtout able Men?

A. Stout able Men, and very willing; with a little Diſcipline, I ſuppoſe it would have been as good a Ship's Company as any in the Navy, —at leaſt as good as any I ever ſaw.

Q. What Diſtance were the *Couronne* and *St. Michel* a-head of the Group of *French* Ships you mentioned at the Time you ſurrendered?

A. I ſuppoſe better than Two Leagues a-head of the Body of the *French* Fleet; the Two Ships named were pretty near within Gunſhot of us; they were coming down under their Foreſails, Topſails, and Topgallant-ſails; in general they were ſtraggling; they were not in a regular Body.

Q. What Diſtance was the neareſt of any other of the Enemy's Line of Battle Ships to the *Couronne* and *St. Michel*?

A. I did not remark particularly, but they were coming down ſtraggling under that Sail; but as they all came under that Sail, the beſt ſailing Ships came down firſt of courſe.

Q. How far from the *Ardent* was the neareſt Line of Battle Ship to Leeward?

A. About Two or Three Leagues.

The Court adjourned till To morrow Morning at Nine o'Clock.

SECOND

SECOND DAY.

FRIDAY, the 3d Day of MARCH, 1780.

COURT met according to Adjournment.

Captain *Boteler* brought in, and Audience admitted.

Lieutenant *Willis* not attending Yesterday upon the constituting of the Court, he was reprimanded for his Neglect.

The Order for assembling the Court-Martial, with the Papers which are therein mentioned, were read to him. He was ordered to withdraw.

Lieutenant Kirkland *again called in.*

Q. Did Captain *Boteler*, the other Officers and Company of the *Ardent*, exert themselves to the utmost of their Power to prevent the Ship's falling into the Enemy's Hands?

A. Yes, Captain *Boteler*, and the Officers and Company, exerted themselves to the best of their Knowledge and Ability.

Q. Then you think every Thing was done that could be done to save the Ship?

A. No, I do not.

Q. Explain yourself.

A. Captain *Boteler* was of one Opinion, I was of another: I dare say Captain *Boteler* acted from his own Sentiments, and I gave my Sentiments; I was of Opinion there was a Probability of making an Escape; I cannot speak for a Certainty that we could have escaped, but there was a Probability; Captain *Boteler* was not of the same Opinion.

Queſtions from Captain Boteler.

Q. From the firſt of your coming on board to the taking of the *Ardent*, did you ever ſee any Part of my Conduct that was different from what the Captain of a Man of War and a Gentleman ought to be?

A. No, I was very happy under your Command.

Q. Did you ſee in any Part of my Conduct or Behaviour, the Day of my being taken, any Appearance of Cowardice, or the leaſt Want of Courage?

A. I was little about your Perſon; I cannot ſay that I ſaw any Thing amiſs in Captain *Boteler*, or I ſhould have ſaid it at firſt.

Q. From the Hurry that we were in, in fitting out the Ship, was any Time loſt, or had we Time to exerciſe our Men?

A. Every Opportunity that offered was taken; we did exerciſe our Ship's Company once at Sea, and once at *St. Helens*; I was on Shore when they were exerciſed at *St. Helens*, but I exerciſed Part of them myſelf at Sea.

Q. How many Days were we at Sea?

A. Two Days; and the Night of the Second Day we went into *Torbay*.

Q. During the Time of our being in *Torbay*, had we an Opportunity of doing any Thing elſe but fleeting and ſetting up our Rigging fore and aft?

A. No; I thought it a very good Day's Work doing that; the Ship's Company fleeted all the Rigging fore and aft, and ſet it up.

Withdrew.

James Primroſe Maxwell, *Secretary to Admiral Sir* Thomas Pye, *ſworn.*

Queſtions from Captain Boteler.

Q. Do you remember my coming on Shore to you to acquaint you with the Hundred Men, Fifty from the *St. Albans*, and Fifty from the *Snake*, refuſing to weigh the Anchor on account of their Pay?

A. I do.

A. I do.

Q. The Admiral was then in the Country, and you came off with me upon that Buſineſs; did you not?

A. The Admiral was in the Country; I went on board the *Ardent* with you.

Q. Was it not propoſed, as the Ship was wanted ſo much to join Sir *Charles Hardy*'s Fleet, inſtead of writing to Town, to get ſome Man on Shore to clothe thoſe People; and whether we did not do ſo as faſt as poſſible?

A. Yes, we did.

Q. Do you remember, that in my Boat I expreſſed my Aſtoniſhment at his Majeſty's Ship *Ardent* being ſent to Sea under my Command in the Manner ſhe was?

A. I remember your expreſſing your Concern at being ſent to Sea in the Manner you was, on account of not having Time to diſcipline your Ship's Company. You made no mention of the Badneſs of your Men, only complained that you had not more Time to arrange your Ship's Company, and diſcipline it.

Withdrew.

Richard Willis, *Fourth Lieutenant, ſworn.*

Q. Give an Account to the Court of all you know, from the Time of firſt ſeeing the Enemy on the 17th of *Auguſt* to the Time the *Ardent* was ſurrendered.

A. Seeing a Frigate upon the Starboard Quarter coming down from Land, at about Nine o'clock in the Morning, with *Engliſh* Colours up, I pointed her out to Captain *Boteler* immediately; I took her to be an *Engliſh* Frigate. I ſaw ſeveral Sail to Leeward with their Topſails out of the Water; I took them to be Two-deckers. Soon after that, I went down below to my Quarters to the Lower Deck, to clear away Cheſts and Things out of the Way of Splinters; I was never upon Deck after that. The private Signal was made immediately; but not being

anſwered,

anſwered, we ran down to the Fleet. After I went down to the Lower Deck, I was not upon Deck at all.

Q. Was you upon Deck when the private Signal was made?

A. Yes.

Q. How far was you then from the Frigate?

A. She was about Three or Four Miles on our Starboard Quarter.

Q. Was it anſwered?

A. No.

Q. Was the Weather ſufficiently clear for you to have diſtinguiſhed it, if ſhe had anſwered the Signal?

A. The Weather was hazy, but clear enough to have diſcerned it, if ſhe had made it.

Q. How long was it from your firſt ſeeing that Frigate, that ſhe hauled the *Engliſh* Colours down, hoiſted *French*, and fired upon you?

A. I was down upon the Lower Deck when the firſt Shot was fired; the Time I do not know.

Q. Was the Lower Deck all clear then?

A. Yes, the Quarters were all clear; the Muzzle Laſhings were on. We cleared the Quarters for joining the Fleet, in hopes of meeting with the *French*.

Q. Were the Guns loaded?

A. Yes.

Q. Was any other Ship in Sight to Windward when the private Signal was made, except that Frigate?

A. Not any that I ſaw.

Q. Do you know what Sail the *Ardent* was under immediately before ſhe ſurrendered?

A. Courſes, Topſails, Topgallant-ſails, and Studding-ſails on the Starboard Side.

Q. How long had the Maintopmaſt Studding-ſail been ſet then, or was it ſet before the Foretopmaſt Studding-ſail?

A. The Time I do not know. My Reaſon for knowing when, was, we were going faſt through the Water, Nine Knots and an Half: I lowered

lowered Six Ports on the Starboard Side, as the Water lopped in and wetted the Guns, in order to keep the Guns dry: I went up and acquainted Captain *Boteler* with it, and then I ſaw what Sail was ſet.

Q. Was you below when ſhe ſtruck?

A. I was.

Q. Then you ſaw yourſelf that the Studding-ſails were ſet?

A. Yes, when I went up after I had lowered the Ports; then I went down again, and ran out the Stern-chace. Soon after that, there were Orders not to fire a Gun.

Q. At what Time did you know the Ships you ſaw were the Enemy's Fleet?

A. When the Frigate fired a Shot.

Q. What Orders did you receive in conſequence of that?

A. The Hands were turned to Quarters: I was then down clearing away to join the Fleet.

Q. Did you receive any Orders?

A. I did not; my Station was there.

Q. Did you receive Orders to begin Action?

A. Certainly I did; we did not fire any of the Larboard Guns.

Q. Was the Drum beat?

A. It was, the firſt Time; upon the firſt ſeeing the Fleet:—I do not know that it was the ſecond Time.

Q. How many Guns did you fire upon the Lower Deck?

A. I ſuppoſe Twenty.

Q. Did you receive any other Orders than to fire?

A. No other Orders.

Q. What was your Opinion, after the private Signal had been made, with regard to the Fleet you ſaw to Windward, before you went to your Quarters?

A. My Opinion was, that it was the *Engliſh* Fleet.

Q. As an Officer, you muſt know the Meaning of a private Signal: When that was not anſwered, what Reaſon could you have for thinking it was the *Engliſh* Fleet?

A. Not

A. Not ſuppoſing the combined Fleet to be ſo near one of our Ports; and as ſhe was upon our Starboard Quarter, we imagined ſhe did not ſee our private Signal.

Q. What was the Situation of the Enemy's Fleet when you went upon Deck to tell the Captain you had lowered the Six Ports?

A. Two Frigates upon each of our Quarters, and Two Two-deckers coming down upon our Beam; One got a Point before our Beam, I ſuppoſe; the *Spaniſh* Fleet were about Four Points before the Beam, in Shore, to Leeward, Two or Three Leagues off.

Q. Was there any Thing upon the Weather-bow?

A. Thoſe Two Ships that were coming down were about a Point before the Beam, I ſuppoſe.

Q. Were there any more upon the Weather-bow?

A. I did not ſee any more.

Q. What Diſtance were thoſe Two Line of Battle Ships from you at that Time?

A. I ſuppoſe about Two or Three Miles.

Q. How long was it after that before you ſtruck?

A. I do not know the Time exactly.

Q. Speak to the beſt of your Recollection.

A. I ſuppoſe about an Hour; I was below, ſpiriting up the People; I did not take Notice of Time at that Period.

Q. Do you think, from the Poſition of the combined Fleet at the Time you mention, that there was a Poſſibility of eſcaping?

A. There was a Poſſibility at the Time I mention; I had not the leaſt Idea of being taken then, nor indeed till the laſt Moment.

Q. How ſoon did you come from the Lower Deck after the Ship ſurrendered?

A. Immediately.

Q. Do not you think it would have been adviſable to have puſhed longer for the Shore, though at every Riſk?

A. If my Opinion had been aſked in that Reſpect, if I had been upon Deck I could have given it.

Q. When

Q. When you came upon Deck, you saw the Situation of the Enemy's Ships, to Windward and to Leeward; you know the Situation your Ship was under in point of Sails immediately before she surrendered: Surely you can form to the Judgment whether it would have been advisable to have pushed longer for the Shore, though at every Risk?

A. As she was neither damaged in Hull or Rigging, there was a Possibility of escaping.

Q. When you came upon Deck, or afterwards, did you hear any of the Officers express a Dissatisfaction at the Ship having been surrendered?

A. I did not hear any of the Officers express any Dissatisfaction, for I was so much distracted myself, I did not pay any Attention.

Q. Was you ever sent for to be consulted before the Ship struck?

A. No.

Q. How was you manned with respect to Seamen?

A. We were not very well manned with respect to Seamen.

Q. How many might there be on board?

A. I suppose a Hundred.

Q. Were the rest of the Ship's Company able Men?

A. They were all able Men; had we been together a little longer. The Ship was rather in Confusion at the first setting out.

Q. Were the Lower-deck Guns loaded at the Time you surrendered?

A. They were.

Q. You describe yourself to have been in a State of Distraction at the Time of the Ship's surrendering; what was that owing to?

A. To think that I should be taken Prisoner, not having the least Idea of it to the last Moment.

Q. You have said, that you thought when you came upon Deck there was a Possibility for the Ship to escape; how do you think that might have been effected, whether by continuing the same Course, or hauling her Wind, or bearing more away?

A. By continuing the same Course, and steering steady.

Q. Did you observe any particular Opening between any Number of

the Enemy's Ships, through which you think you could have reached the Shore?

A. I did not take any particular Notice whether there was any Opening: There was an Opening right a-head; That Course might have brought the Ships that were coming down upon our Beam, upon our Quarter: Then we should have been able perhaps to have hauled our Wind.

Q. Do you think you could have effected that Manœuvre without the Enemy's Ships running on board of you?

A. I think we could.

Q. How far do you think you was from the Shore at that Time?

A. I suppose about Four Leagues, to the best of my Recollection.

Q. Did Captain *Bottler*, the other Officers and Company of the *Ardent* exert themselves to the utmost of their Power to prevent the Ship from falling into the Enemy's Hands?

A. I certainly imagine that Captain *Bottler*, the other Officers and Ship's Company did; otherwise I should have taken Notice of it at that Time, before we struck.

Q. Where was you when the Ship struck?

A. On the Lower-deck, preparing for any Ship that might come up with her.

Q. You have said that every Thing was done that could be done, and yet that there was a Possibility of escaping; explain yourself upon that Point.

A. As I was quartered on the Lower-deck, I expected to have been sent for to be asked my Opinion before the Ship was struck. I naturally trusted that the Captain and the rest of the Officers were doing their utmost.

Q. What would have been your Opinion, if you had been asked?

A. Had I been upon Deck, I could have given my Opinion; but as I was not, I could not give my Opinion.

Q. At what Time did you think there was a Possibility of the Ship's escaping?

A. At

A. At the Time when I went upon Deck to inform Captain *Boteler* that I had lowered the Six Ports on the Starboard Side, and run the Guns in, in order to keep them dry.

Q. What was the Situation of the *Ardent* with reſpect to the Enemy's Ships after you went upon Deck, upon her having ſurrendered?

A. When I went upon Deck, after ſhe was ſurrendered, ſhe was then ſurrounded; then I ſay I was ſo much diſtracted, on account of being taken, that I did not pay Attention to any Thing elſe.

Queſtions from Captain Boteler.

Q. From the Time of your coming on board the *Ardent* to the Time of my being taken, did you find, in any one Point, that my Behaviour was contrary to the Character of a Captain of a Man of War and a Gentleman?

A. No, I never did.

Q. Did I not exert myſelf as much as any Officer could do to forward that Ship for Sea?

A. Certainly you did; ſhe would have been one of the firſt diſciplined Ships in the Service.

Q. Was it your Opinion, or did you hear from any Officer in that Ship, that the Captain gave her up cowardly or unofficer-like?

A. No; I never did. *Withdrew.*

Robert Roſs, *Captain of Marines, ſworn.*

Q. Where was you quartered on the 17th *Auguſt*?

A. Upon the Poop.

Q. Do you recollect who ordered the Colours to be ſtruck?

A. Yes.

Q. Mention who it was.

A. Captain *Boteler*.

Q. Do you mean when firſt they were ſtruck, and Nobody could give an Account why; or afterwards?

 A. When

A. When the Enſign firſt was ſtruck, I believe it never was hoiſted again.

Q. How long was that before the Pendant was ſtruck?

A. I believe about Half an Hour, nearly.

Q. Did you look upon the Ship to be ſurrendered when the Enſign was ſtruck; and in conſequence go from your Quarters?

A. I looked upon the Ship to be ſurrendered at that Time; that Surpriſe was ſoon recovered by making Sail afterwards. I was down upon the Quarter-deck at the Time; I was not upon the Poop when the Enſign was ſtruck.

Q. Did you hear Captain *Boteler* give the Orders himſelf?

A. Yes; and I repeated the Orders at Captain *Boteler*'s Requeſt.

Q. Had you left your Quarters by Direction of Captain *Boteler*, or of your own Accord?

A. By Direction of Captain *Boteler*; there was Converſation between Captain *Boteler* and me; from the Firing and other Things he beckoned me to come down to him.

Q. Relate the whole of that Converſation, ſo far as it relates to the Charge.

A. Captain *Boteler*, at the Time of the Firing, aſked me, what could have become of the *Britiſh* Fleet; he was aſtoniſhed what could have become of the *Britiſh* Fleet. My Reply was, I could not tell; that it was very ſurpriſing we did not meet with them. He then aſked me what I thought of our Situation. I told him, I thought our Situation was a very diſtreſſing one at that Time. He aſked me what I thought of it. I told him, I thought him in ſuch a Situation, that he could not well extricate himſelf. He then aſked me what I thought he ſhould do upon that Occaſion. To that I made Anſwer, That he muſt do as he pleaſed. After that he repeated the Queſtion once or twice, I believe. And I told him, that the Impoſſibility of eſcaping ſpoke for itſelf what was to be done; that if he could not eſcape, certainly he had nothing left but to ſurrender. That was, I believe, nearly the whole of the Converſation.

Q. Was

Q. Was any other Perſon within Hearing at the Time of this Converſation?

A. The chief Part of the Converſation paſſed from Captain *Boteler* on the Quarter-deck, to me upon the Poop; the reſt of it was upon the Quarter-deck, where every Body was that were upon the Quarter-deck; the Maſter was walking there; and the People that were at Quarters there were in Hearing; for we ſpoke as loud as we could to make one another hear.

Q. You ſay that Captain *Boteler* ordered the Enſign to be ſtruck, and that Sail was made afterwards; by whoſe Orders was that done?

A. By Captain *Boteler*'s Orders, I believe; but I believe there were ſome Orders firſt to ſhorten Sail.

Q. You ſaid you joined in Opinion with Captain *Boteler*, that it was neceſſary to ſurrender the Ship; Was any other Officer of that Opinion?

A. Yes; the Firſt Lieutenant was of that Opinion at the Time the Pendant was hauled down.

Q. Was there any other Officer preſent at the Time of the Converſation you had with Captain *Boteler*, when you ſaid he had nothing to do but to ſurrender?

A. I cannot ſay whether any body elſe was aſked at that Time; I take it for granted they were aſked; but what their Opinion was, I do not know.

Q. They were not all aſked together.

A. I did not ſee any body elſe there when I was aſked.

Q. You alluded to ſome Firing when Captain *Boteler* beckoned you to come from the Poop; from whence did that Firing proceed?

A. From the different Decks on the Starboard Side of the *Ardent*.

Q. Was there nothing firing at the *Ardent*?

A. Yes, there was; there were Four Frigates. Whether they were all immediately diſcharging their Guns at the ſame Inſtant, I cannot ſay; but they were at different Times, and in different Poſitions from the Ship, firing upon her.

Q. Did

Q. Did you hear any Converſation paſs between Lieutenants *Paterſon* and *Kirkland* at the Time the private Signal was flying, or at any other Time?

A. Yes, I did.

Q. Relate to the Court what it was.

A. Mr. *Kirkland* came to Mr. *Paterſon*, and told him the private Signal was anſwered to Windward, and aſked him why our private Signal was not hauled down. Mr. *Paterſon* took the Glaſs and looked; he ſaid he could not ſee the Signal anſwered;—that he had Orders from the Captain to look out for an Anſwer; and till he ſaw that, he could not haul the Signal down. I think that was nearly the Converſation. I was preſent at the Time, and indeed took a Spying-glaſs myſelf to look for the Signal, but could not ſee it anſwered.

Q. Was you upon the Quarter-deck immediately before the Pendant was ſtruck?

A. I was.

Q. Did you hear any Converſation between the Captain and any other of the Lieutenants at that Time?

A. I did.

Q. Relate it.

A. The Captain aſked Mr. *Paterſon*, Mr. *Kirkland*, and the Maſter (I ſhould have firſt obſerved that he called for his Officers, as indeed he had, during the Courſe of the Day, frequently done); he aſked whether they did not think it adviſable to ſurrender at that Time, as it appeared impoſſible to eſcape. I gave my Opinion. Mr. *Paterſon* told him, he thought it impoſſible to eſcape, and it was better to ſurrender. Mr. *Kirkland* ſaid, he believed it might as well be tried a little longer. I believe Somebody or other, but I cannot immediately recollect who, differed in Opinion from him; but at laſt he came into the Matter with them, I think, and ſaid, "Well, if that is the Caſe, we may as well ſtrike at once;" but I am not very clear as to that Matter.

Q. What was the Maſter's Opinion?

A. I

A. I do not recollect.

Q. Do you recollect whether any other Perſon was of the ſame Opinion with Mr. *Kirkland*?

A. No; I never heard that any other Perſon was.

Q. You ſay the Maſter was with the Lieutenants on the Quarter-deck?

A. Yes, but I do not recollect what he ſaid at that Time; but, from Converſation that has paſſed between me and the Maſter ſince our going into *France*, he has always declared, that it was his Opinion ſhe ſhould ſurrender at the Time ſhe did.

Q. Do you recollect any other Converſation between the Captain and Lieutenant *Kirkland* at that Time?

A. No; I cannot charge my Memory with any.

Q. Do you recollect Lieutenant *Kirkland*'s ſaying any thing about Sail being made, and that thus we ſhould have an Advantage?

A. No, I do not, at the Time of the Converſation about hauling the Pendant down; but I think he mentioned, ſome time before that, ſomething about making more Sail, and having an Advantage from it.

Q. What Time was you ordered to your Quarters, and upon what Occaſion?

A. The Order for Quarters was general in the Morning; I do not know the exact Hour; it was early in the Morning: When I came upon Deck, ſome Time after that, there was ſome neceſſary Work for the Ship required of the People: The People were all about there, and I remained there; the Men were not at Quarters till after the *French* had fired, I believe, Two or Three Shot; the Second Shot was fired before I went off the Quarter-deck; the Men that I had quartered upon the Poop remained there, but I was not there myſelf; I had been upon the Poop Two or Three Times during the Courſe of the Morning.

Q. Who received the Order from you to ſtrike the Enſign?

A. I do not know; I mentioned it in general from the Quarter-deck.

Q. What

Q. What was the Situation of the Ship with regard to the Enemy at that Time?

A. She was ſurrounded by the whole of the Enemy's Fleet; the whole of the Enemy's Fleet formed a Creſcent round her.

Q. Was you near enough to fire your Muſketry at the Frigates when the Enſign was ſtruck?

A. We were not.

Q. Did the Firing do the *Ardent* much Damage?

A. No, I did not hear of much Damage; it killed a few Men and wounded a few.

Q. When Orders were given to ſhorten Sail, and the Pendant was ſtruck, what Diſtance was the neareſt Line of Battle Ship from the *Ardent*?

A. I cannot ſay exactly the Diſtance; I believe about Gunſhot.

Q. Were the Enemy, at any Time, within Reach of your Muſketry?

A. No, never.

Q. How was the Creſcent formed?

A. From the Eaſtern and Weſtern Flanks of the Fleet in Shore; the Eaſternmoſt formed in Shore got ſo as to cut off any Poſſibility of our eſcaping either to the Weſtward or the Eaſtward; there was, I know, an Opening directly into Land; I did not ſee any Ships there, except the Frigates.

Q. Was that Opening to Windward?

A. I believe the Opening was to the Northward; I believe, as the Day advanced, the Wind got more off the Land; the Opening certainly was not to Leeward.

Q. Was the Opening on the Weather Side?

A. Yes, it was.

Q. At what Time of the Day was the Ship ſurrendered?

A. I do not know the Hour exactly; I think between Twelve and One.

Queſtions from Captain Boteler.

Q. Was it not my Deſire to you that the Colours ſhould not be ſtruck without my Orders?

A. No,

A. No, I never received any ſuch Orders.

Q. Did you not hear me make uſe of an Exclamation, after having looked forward, upon turning round again, and ſeeing the Colours down——"God damn it, Who hauled the Enſign down?"

A. Some Time after the Enſign was down, when Mr. *Kirkland* came upon the Quarter-deck, and aſked Captain *Boteler* whether he had ſtruck and ſurrendered, Captain *Boteler* anſwered, No, he had not ſurrendered; and aſked who hauled the Enſign down: The Enſign was a long Time in coming down; more than a Minute, I believe, ſticking Half-way up and Half-way down; ſo it could not be immediately upon turning round.

Q. Did not I aſk you who hauled the Enſign down?

A. You did, and I underſtood with reſpect to the Perſon that hauled it down: Captain *Boteler* ſeemed to be hurt upon Mr. *Kirkland*'s ſpeaking to him about ſurrenderings, in giving Directions to have it hauled down ſo ſoon. I ſaid I did not know who hauled it down, underſtanding he meant the Perſon who hauled it down from the Staff. I did not imagine a Perſon who had given the Directions for it himſelf, would aſk who it was that had given thoſe Directions.

Withdrew.

Lieutenant Teeling Caſſidy, *of Marines, ſworn.*

Q. Where was you quartered on the 17th of *Auguſt*?

A. On the Main-deck.

Q. Do you know any Thing of the Enſign being ſtruck?

A. No, I was upon the Main-deck when it was ſtruck.

Withdrew.

Lieutenant John Williams, *of Marines, ſworn.*

Q. Where was you quartered on the 17th of *Auguſt*?

A. On the Lower-deck.

Q. Do you know any Thing of the Enſign being ſtruck?

A. No.

Withdrew.

Robert Waller, *Maſter's Mate, ſworn.*

Q. Where was you quartered on the 17th of *Auguſt*?

A. I was not quartered at any particular Place. The Quarter-bill was not made out.

Q. Was you never called to Quarters?

A. The Drum beat to Quarters.

Q. Was you never called to Quarters by Liſt with the reſt of the Ship's Company?

A. I was near.

Q. Where was you?

A. Upon the Lower-deck at the Time of the Frigate's firing upon the *Ardent*, at the Third Gun on the Starboard Side from forward.

Q. When the Frigate fired at you, was the Lower-deck quite clear?

A. I cannot ſay as to being quite clear, whether it was or not: I don't think it was quite.

Q. How long was you there?

A. During the Time the Frigates fired upon the *Ardent*, and that we returned the Fire again, till they paſſed aſtern of us, that our Guns would not bear upon them.

Q. Did you fire none of your Lower-deck Guns?

A. We fired all on the Starboard Side, as far as I know. The Fire proceeded a great Way aft, but I cannot ſay whether all the Way aft or not.

Q. Was the Lower-deck ſo clear as not to impede the Firing of the Guns?

A. Yes.

Q. Were your Hammocks up?

A. Yes.

Q. Where

Q. Where did you go when you went from thence?

A. Up to endeavour to make Sail. I was upon the Main-yard aſſiſting to rig out the Main-top Studdingſail-boom—I ſtaid there till I was called down.

Q. Who ordered you upon the Main-yard?

A. Lieutenant *Kirkland*.

Q. Who called you down?

A. I think, to the beſt of my Remembrance, it was Mr. *Hall*, the Maſter, on the Fore-part of the Quarter-deck on the Starboard Side.

A. Did Mr. *Hall* tell you what you was called down for?

A. I called down from off the Main-yard, to aſk if the Studding-ſail was to be ſent up. I was anſwered, No, and was deſired to come down, as they were going to ſtrike.

Q. Was the Enſign ſtruck when you was upon the Main-yard?

A. It had been ſtruck ſome Time before.

Q. Do you know who ordered it to be ſtruck?

A. I do not.

Q. What was the Situation of the Ship with regard to the Enemy's Ships when you was upon the Main-yard?

A. On the Starboard Quarter were the *Courageux* and *St. Michel*; aſtern of the *Ardent* were Four Frigates; on the Larboard-bow there were ſeveral, I cannot ſpeak as to the Number.

Q. How far upon the Bow?

A. About Three Points, as near as I can judge.

Q. What Ships were upon the Weather-bow?

A. I cannot ſay poſitively whether there were any Ships upon the Weather-bow or not; but to the beſt of my Remembrance, I think there were.

Q. Do you think, if there were any there, that they were wide upon the Weather-bow, or otherwiſe?

A. If I remember right, they were ſituated much the ſame as thoſe upon the Lee-bow.

Q. What

Q. What was the Diſtance of the Opening between the Ships of the Enemy which were upon the Lee-bow, and thoſe upon the Weather-bow?

A. I ſhould judge, between Two and Three Leagues.

Q. How far were you from the Land at that Time?

A. About the Diſtance of Three Leagues.

Q. Do you recollect how the Wind was then?

A. I believe N. E.

Q. Did the *Ardent* ſtem right in for the Land?

A. Not directly in for the Land, becauſe we were endeavouring to avoid the *St. Michel* and the *Couronne*, which came upon us very faſt; and if we had ſtood as cloſe in upon a Wind as we could have done, we muſt have gone athwart their Hawſe; which was, I think, the Reaſon the Ship was kept from the Wind, to avoid thoſe Two Ships.

Q. How far was the *Ardent* from the headmoſt Ship upon the Lee-bow?

A. I believe nearly within Gunſhot.

Q. Had you a Reef in your Topſails then?

A. A ſingle Reef.

Q. Did your Topſails hoiſt cloſe up with a ſingle Reef?

A. Very nearly.

Q. What Sail did you find ſet when you went upon the Main-yard?

A. They were then ſetting the Studding-ſail forward: I think the Foretopmaſt Studding-ſail and Topgallantmaſt Studding-ſail were ſet. The lower Studding-ſail was not ſet, becauſe it would not ſtand.

Q. Was there any Poſſibility of your effecting an Eſcape from the Enemy's Ships, which were on each Bow, if you had preſſed with all the Sail you could carry?

A. That, I ſhould imagine, depended entirely upon the Fire we ſhould have received from their Ships; whether we ſhould have been diſabled or not in paſſing.

Q. Do you think you would have riſked a very ſevere Fire?

A. I

A. I think we ſhould.

Q. What Diſtance were you from the Ships which were on your Weather-bow?

A. I believe nearly within Gunſhot of them, as well as thoſe upon the Lee-bow.

Q. At what Rate were you ſailing?

A. I believe at that Time we might be going about Eight Knots.

Q. Could you have ſeen diſtinctly the Enemy's Ships upon the Lee-bow from the Weather-mainyard-arm?

A. I ſaw them off the Deck, when I came down; as to ſeeing them from the Weather-mainyard-arm, I do not think I could, neither did I look.

Q. Do not you think you ſhould have continued under Sail, and riſqued that Fire?

A. That was left to the Opinion of my Superior Officers. I was not conſulted in that, neither had I any Buſineſs with it.

Q. Recollect yourſelf a little in regard to what you ſaid about the Ships upon the Weather-bow. At firſt you ſaid, you did not know whether there were any there, or not; now you ſay they were within Gunſhot of you.

A. According as I remember.

Q. You ſpoke poſitively to the *Couronne* and *St. Michel* upon your Weather-quarter?

A. Yes.

Q. But you did not ſpeak ſo poſitive as to thoſe upon your Weather-bow?

A. I think, now my Memory is refreſhed, I do remember that they were much the ſame as thoſe upon the Lee-bow.

Q. How far were the *Couronne* and *St. Michel* from you?

A. At the Time when the Pendant was hauled down, they certainly were within Gunſhot, if they had choſen to fire upon us.

Q. Did

Q. Did you ſhorten Sail before you ſtruck the Pendant, or as you ſtruck it?

A. At the ſame Time, I think, that the Pendant was hauled down, we hauled up the Courſes.

Queſtions from Captain Boteler.

Q. When you was on the Lower-deck, did the Men quartered there ſeem to know the Manner of loading, priming, or firing of Guns?

A. I cannot ſpeak as to any other Gun, but that which I was at myſelf: The Gun that I was at, almoſt every Man that was at it was a Landſman, and totally unacquainted with the Uſe of a Gun.

Q. Do not you remember, on the Quarter-deck, when you was there, that I ſeemed to be much ſurpriſed and aſtoniſhed at the Enſign's being ſtruck, and mentioned it to you?

A. I remember it extremely well.

Q. Have you ever heard any one Perſon in the Ship ſay, that I ordered the Enſign to be ſtruck?

A. Never.

Q. Do you think I ſhould have acted right to have riſqued the Deſtruction of my Men with ſuch a ſuperior Force about me, and no Likelihood of getting off?

A. I do not think there was any Likelihood of getting off, becauſe the Ships aſtern, which were upon the Quarter, all came up with us very faſt: Our Ship ſailed very heavy.

Q. Did not you ſay juſt now, that thoſe Ships were within Gunſhot of us, as well as the Frigates?

A. I think (and think I can be poſitive in it) that the *St. Michel* and the *Couronne* were within Gunſhot of us when the Pendant was ſtruck.

Q. Do you think the *Ardent*, in her Situation at that Time, was capable of returning another Broadſide to thoſe Ships, had they given her their Broadſides?

A. Yes, I think ſhe might.

Q. And to have continued it?

A. No,

A. No, I think not.

Q. Did you ever hear that any of the Mates, Midshipmen, or Officers of the Ship seemed to be dissatisfied with the Surrender of her to the Enemy, or think the Captain had not done his Duty?

A. No; I never did.

Withdrew.

Court then adjourned till Nine o'Clock To-morrow Morning.

THIRD DAY.

SATURDAY, the 4th Day of MARCH, 1780.

COURT met according to Adjournment.

Captain *Boteler* brought in, and Audience admitted.

The Judge-Advocate acquainting the Court, he had received a Note from Lieutenant *Kirkland* requesting to be called in again, he was accordingly called, and thereupon addressed the Court as follows:

"I was much surprised to find my Journal read as a Part of the Charge against Captain *Boteler*; I declare, it was never my Intention that it should: It contains Facts, as they appeared to me, on my most serious Recollection. Lieutenant *Willis* was with me in *London* at the Time of my sending the Journal from a Coffee-house by a Porter to my Agent. I gave no Orders to my Agent how to act with it, but left it, in case it should be necessary for the receiving of my Pay. I beg Leave to say this in order to convince the World, it was not done with any malicious Design, as it has been rumoured that it was. Mr. *Willis* can confirm this, if the Court think proper to ask it, as I declared my Sentiments about it to him at the Time. It was not my Intention that my Journal should appear as an Accusation against Captain *Boteler*; and what I have now offered, I declare upon my Oath."

Court.

Q. In the Evidence you have before given the Court, you have declared that you did not recollect you had ever said to any Body that the private Signal had been answered, and in consequence of that had asked why the private Signal was not hauled down: Do you, upon better Recollection, find Reason for continuing in the same Belief?

A. I

A. I do not recollect that I ever did.

Q. Did you hear at that Time from any other Perſon in the Ship, that the Signal had been anſwered?

A. No, I never heard that it was anſwered. I often expreſſed my Surpriſe at its not being anſwered, for I was always of Opinion that it was the *Engliſh* Fleet till the Frigate fired upon us. A private Signal was flying at the Maſt-head when the Frigate fired upon us, and if I had ſeen it, I ſhould certainly have pointed it out, in order that our private Signal might have been hauled down.

Withdrew.

Robert Waller, *Maſter's Mate, called in again.*

Q. Did you always keep that Log-book now lying on the Table?

A. Yes; but there is a ſmall Part of it of Tranſactions in the Harbour written by Mr. *Hall*, the Maſter.

Q. Was that Log-book kept on board the Ship to the Day of her being taken?

A. Yes, excepting the Tranſactions on the Day of her being taken, which I wrote the next Day, not having Opportunity to write it that Day: I wrote it on board the *Saint Michel*.

Q. Did the Maſter, or any other Officer, examine that Log-book?

A. There was no other ſuperior Officer on board except the Captain.

Queſtions from Captain Boteler.

Q. Did not the Maſter examine the Days that were contained in that Log-book, except the Day on which the *Ardent* was taken?

A. Every Day conſtantly. I always took the Orders from the Maſter what I was to inſert in the Log-book. I wrote according to his Direction, and ſhewed it to him after I had written it.

Q. Did you not carry that Log-book to the Maſter upon your Arrival in *England?*

FH
MVSEVM
BRITANNICVM

A. I did, the ſame Evening that I arrived in *London*: I carried it to him from you.

Q. Had he not it in his Poſſeſſion till the Time that we came down upon the Court-Martial?

A. Yes, I delivered it to him, and left it with him.

Q. Did the Maſter ſee the Entry of the Tranſactions of our being taken?

A. He certainly did; he read them.

Q. Did he approve of them?

A. He did not make any Objection to them; he ſaid he thought what was ſtated there were real Facts, as far as he knew; that he knew nothing to the contrary.

Q. Did not you hear Lieutenant *Kirkland* ſay, he had made the *Marlborough*, and that ſhe had her lower Tier of Guns out?

A. I did hear him ſay, that he thought the Ship on the Larboard Beam of the *Ardent* was the *Marlborough*, and that ſhe had her Lower-deck Guns run out; upon which Captain *Boteler* ſaid, Then let our Lower-deck Guns be run out. They were accordingly run out on the Larboard Side, and were ſo kept near Three Quarters of an Hour, before the other Side were run out, the Larboard Side being the Side neareſt to the Ships in Sight.

Q. What do you apprehend was the Reaſon that the Starboard Guns were not run out, as well as the Larboard?

A. To prevent the Tops of the Sea running in to the Ports upon the Deck.

Withdrew.

William Mules, *Maſter's Mate, ſworn.*

Q. Where was you quartered on the 17th of *Auguſt*?

A. On the Lower-gun Deck.

Q. How long was you there?

A. I was there all the Time from our being ordered to Quarters; from Half paſt Nine till the Ship ſtruck.

Q. Was

MVSEVM BRITANNICVM

Q. Was the Lower-gun Deck clear when the Frigate began firing?

A. No.

Q. Was it long afterwards before it was clear?

A. Not long.

Queſtions from Captain Boteler.

Q. Was the Lower-deck cleared as ſoon as it could be from the Situation of the Ship?

A. It was.

Q. Were there not a great many Shot-boxes on the Lower-gun Deck, that we had not Time to get down below?

A. Yes, there were.

Q. Do you remember the Time we remained in *Torbay?*

A. Yes.

Court.

Q. Were all the Shot-boxes belonging to the *Ardent?*

A. No, they did not belong to the *Ardent*; there was a great Number for the Fleet; there were Three Hundred, I believe.

Queſtions from Captain Boteler.

Q. During the Time we were in *Torbay*, how were we employed?

A. In fleeting the Rigging and ſetting it up.

Q. Had we Time for doing any Thing elſe?

A. I do not think we had: We were very buſy from Day-light till Dark.

Withdrew.

William Sherbrook, *the Purſer, ſworn.*

Q. Where was you quartered on the 17th of *Auguſt?*

A. I was quartered in the Cockpit, and was not upon Deck till after the *Ardent* ſtruck.

Court or Captain Boteler *having no further Queſtions to aſk, the Witneſs was diſcharged from further Attendance.*

Joſeph Regnier, *Midſhipman, ſworn.*

Q. Where was you quartered on the 17th of *Auguſt?*

A. On the Poop.

Q. Do you know who ſtruck the Enſign?

A. No, I do not.

Q. Did you hear any Orders given to ſtrike the Enſign?

A. No, I did not.

Queſtions from Captain Boteler.

Q. Did you hear me give Orders that the Enſign ſhould not be ſtruck?

A. Yes, I did; to Captain *Roſs.* Captain *Boteler* told Captain *Roſs,* before the Colours were ſtruck, to ſee that the Colours were not ſtruck, till he gave Orders for them to be ſtruck.

Q. How long was that before the Enſign was ſtruck?

A. I cannot tell the exact Time; but it was a very little while.

Q. Did you ever hear that it was ſtruck by my Orders?

A. No, I did not.

Q. Did you ever hear it was ſtruck without my Orders?

A. Yes.

Queſtions from the Court.

Q. Where was you at the Time you heard the Captain give thoſe Orders to Captain *Roſs?*

A. Upon the Poop.

Q. Where were Captain *Boteler* and the Captain of Marines?

A. The Captain of Marines was on the Poop; Captain *Boteler* was on the Quarter-deck.

Q. Was any Perſon by when Captain *Boteler* gave thoſe Orders to the Captain of Marines?

A. I really cannot tell who was by at the Time. I cannot tell exactly who was there.

Q. Were you the only Midſhipman quartered upon the Poop?

A. No other but me.

Q. Who did you hear ſay that the Enſign was ſtruck without the Captain's Orders?

A. Several.

Q. Do you remember any of their Names?

A. No; it was the general Run that the Enſign was ſtruck without the Captain's Orders.

Q. At what Time did you hear that; after you was on board the *French* Ship, or while you was on board the *Ardent?*

A. I heard it in *France.*

Q. Did you hear it on board the *Ardent?*

A. No; becauſe when they boarded us, I was one of the firſt out of the Ship.

Q. Do you know by whoſe Orders the Pendant was ſtruck?

A. Yes; I heard Captain *Boteler* give Orders to bring the Ship to.

Captain Boteler *admitted that he gave Orders to ſtrike the Pendant.*

Queſtions from Captain Boteler.

Q. Did you hear me aſk Captain *Roſs*, who ſtruck the Enſign?

A. Yes.

Q. What did he ſay?

A. He ſaid he did not know.

Q. Did you continue on the Poop from the Time you heard me give Orders that the Enſign ſhould not be ſtruck till it was ſtruck?

A. Yes.

Queſtions from the Court.

Q. Where was you when you heard Captain *Boteler* aſk Captain *Roſs* if he knew who ſtruck the Enſign?

A. I was on the Poop.

Q. Where were Captain *Roſs* and Captain *Boteler?*

A. Captain *Roſs* was on the Poop, Captain *Boteler* on the Quarter-deck.

Withdrew.

John

John Burgeſs, *Midſhipman, ſworn.*

Q. Where was you quartered on the 17th of *Auguſt?*

A. I was quartered to the ſecond Gun on the Starboard Side of the Quarter-deck.

Q. Were your Guns all clear when the Frigate fired at you?

A. No.

Q. As you ſeem to be an old Seaman, what did that Frigate appear to you to be, from her Rigging, Painting, and Appearance in other Reſpects?

A. She appeared to me to be an *Engliſh* Veſſel.

Q. Do you remember the private Signal being made?

A. Yes, I do.

Q. Was that Frigate in ſuch a Poſition that ſhe could or could not ſee that private Signal?

A. I cannot ſay whether ſhe was or was not at the Time the Signal was firſt made.

Q. How long was it out?

A. It might be out about Half an Hour.

Q. Can you ſay whether ſhe at any Time, during that Half-Hour, could or could not ſee it?

A. No, I cannot.

Q. Had ſhe anſwered it, ſhould you have known whether ſhe anſwered it right or wrong?

A. I cannot ſay.

Q. How long were you at your Quarters?

A. I was at my Quarters from the Time they beat to Quarters, till the Ship ſtruck.

Q. From what Time to what Time?

A. From, I believe, about Half after Eight till about Noon.

Q. Did you keep ſtrictly to your Gun, or walk about the Quarter-deck?

A. I.

A. I kept ſtrictly to my Gun the whole Time.

Q. Did you hear any Orders from Captain *Boteler* to Captain *Roſs*?

A. No farther, than that Captain *Roſs* came off the Poop, and begged of Captain *Boteler* to ſtrike the Colours. Captain *Boteler* made Anſwer, "No, by no Means; I will not have the Colours ſtruck without my Orders."

Q. How long was it from the Time of your firſt hauling down the private Signal to your making it again?

A. It might be Three Quarters of an Hour.

Q. Was it ever anſwered?

A. I cannot take upon myſelf to ſay whether it was or not.

Q. How far was you from the Frigate when the private Signal was firſt made?

A. We might be about a League and an Half.

Q. How far from the neareſt of the Enemy's Ships the ſecond Time it was made?

A. We might be then a League off.

Q. Did you hear any Converſation reſpecting the private Signal being anſwered, or not?

A. I heard ſome of the Gentlemen on the Quarter-deck ſay, they thought the Signal was anſwered; but who they were I will not take upon myſelf to ſay.

Q. Was Captain *Boteler* on the Quarter-deck when you heard that Converſation?

A. Yes.

Q. Did any Body mention that to the Captain?

A. I will not take upon myſelf to ſay whether any body did or not.

Q. How long was it before the Enſign was ſtruck that you heard Captain *Boteler* order Captain *Roſs* not to ſtrike it without his Orders?

A. A very ſhort Time; about Fifteen or Twenty Minutes.

Q. Did you ever hear who did ſtrike the Enſign?

A. No.

Q. Did you ever hear who gave the Orders for ſtriking the Enſign?

A. No.

A. No.

Q. Was you upon the Quarter-deck when the Enſign was ſtruck?

A. Yes.

Q. Did Captain *Boteler* immediately know it was ſtruck?

A. In a few Minutes afterwards he did.

Q. What did he ſay upon that Occaſion?

A. I cannot ſay: I did not take ſo much Notice, after the Enſign was down, of what Captain *Boteler* ſaid.

Q. Did Captain *Boteler* order it to be hoiſted again?

A. I cannot ſay whether he did or not.

Q. Did you hear any Orders given for hoiſting it again?

A. To my Knowledge, I did not.

Q. Was the Captain angry when he found the Enſign was ſtruck?

A. Yes; he was in a great Fluſtration about its being ſtruck without his Orders; but I do not particularly know what he ſaid.

Q. Did you ſee Lieutenant *Kirkland* upon the Quarter-deck about that Time?

A. I cannot ſay I did.

Q. How was the Weather when the private Signal was made a ſecond Time?

A. Very fine Weather, but rather hazy.

Q. Do you think it was ſo hazy, that the Ships near you could not ſee that Signal?

A. I cannot take upon me to ſay.

Q. Could you have ſeen a Flag at either of their Maſt-heads, if there had been one?

A. Yes, I believe I might.

Q. Did you ſee any Signals flying on board that Frigate, or any of the other Ships?

A. I did not ſee any flying on board that Frigate, but I ſaw ſome Flags flying on board the Enemy's Ships that were to Leeward of us; but what Colours they were of, I cannot take upon me to ſay.

Q. Did you look with a Glaſs?

A. I

A. I did not.

Q. How far were the Ships to Leeward from you at that Time?

A. They might be about Two Leagues and an Half.

Queſtions from Captain Boteler.

Q. Do you know who ſtruck the private Signal the ſecond Time, as being anſwered?

A. I will not take upon myſelf to ſay who ſtruck it when hoiſted the ſecond Time.

Q. Did you ſtrike it at all?

A. Yes, I did; and I believe it was the firſt Time it was hoiſted.

Q. How long was it before the Frigate fired, that it was ſtruck by you?

A. It might be an Hour and an Half before that. Lieutenant *Paterſon* deſired I would go up to the Maſt-head, and make out what Ships they were to Leeward of us; and Orders were given off the Quarter-deck, I do not know by whom, to haul down the Signal, which I accordingly did.

Q. Did you then underſtand why it was hauled down?

A. No; I did not know at that Time for what Reaſon it was hauled down.

Q. Had you at any Time Orders to look out for the *Victory*, that I might direct my Courſe to her?

A. Yes, I had.

Q. And did you ever ſay, that you thought you made the *Victory*?

A. I thought I did at one Time.

Q. What was your Opinion, as a Seaman, of that Fleet, till the Frigate fired at us?

A. My Opinion was, that it was an *Engliſh* Fleet.

Q. Was not there a great Backwardneſs in getting Powder and Wads on the Quarter-deck?

A. They were very backward in getting both Wads, Powder, and Matches.

Q. What do you impute that Backwardneſs to?

A. Our being hurried out in ſuch a Manner that we had not Time to put Things in their proper Places, to be immediately got at when they were called for.

Q. Do you think it was from the Awkwardneſs of the People, or from the Want of Diſcipline?

A. I cannot take upon myſelf to ſay; they were all Strangers to me; and not having been long on board the Ship, I could not be a Judge what they were.

Q. Do not you remember my aſking the People what was the Reaſon of that Confuſion?

A. I remember that perfectly well; they ſaid they had no Powder and no Wads.

Q. Do you remember that Twenty-four Pound Cartridges were brought upon the Quarter-deck for Nines?

A. I remember that very well.

Q. What did you attribute that Miſtake in the Men to?

A. I believe, being in ſuch a Confuſion, and ſome of them not knowing Eighteen Pounders from Twenty-four.

Q. During the Time you was upon the Quarter-deck, which was partly the whole Time that we were with the Enemy, did you ſee in my Actions any Thing that was derogatory to the Officer and the Man of Honour?

A. No, I cannot ſay I did.

Queſtions from the Court.

Q. You ſaid at one Time, you thought you made the *Victory*; did you change that Way of thinking?

A. I thought I did; but I could not be poſitive it was her.

Q. Did you alter your Way of thinking at any Time before you knew it was the Enemy's Fleet?

A. No, I did not.

Q. At what Hour was it that you ſtruck the private Signal?

A. I cannot take upon myſelf to ſay at what Time; it might be about a Quarter after Eight, as near as I can gueſs.

Q. Are you ſure it was before you went to your Quarters?

A. Yes, I think it was before I went to my Quarters.

Q. Was it at that Time you went up to look at thoſe Ships to Leeward?

A. Yes.

Q. Was it at that Time you thought you ſaw the *Victory*?

A. Yes.

Q. At what Diſtance might that Ship be from you?

A. It might be Two Leagues and a Half, or rather more.

Q. Had you any Glaſs with you?

A. No. *Withdrew.*

James Sims, *Corporal of Marines, ſworn.*

Q. Where was you quartered on the 17th of *Auguſt*?

A. On the Poop.

Q. Do you remember when the Enſign was hauled down?

A. Yes.

Q. Do you remember who ordered it to be hauled down?

A. The Captain of Marines was called by Captain *Boteler* upon the Quarter-deck, and aſked, what he thought was beſt to be done? The Captain of Marines made Anſwer, he did not know which was beſt to do. The Captain of Marines ſaid, as we were in ſuch a Hobble, that it would be beſt to ſtrike. The Converſation that paſſed between the Captain of the Ship and the Captain of Marines I cannot be poſitive to, but the Captain of Marines came up immediately and ordered the Enſign to be ſtruck. The Lieutenant came upon Deck by the Captain's Deſire, and he aſked who hauled the Enſign down. Captain *Roſs* replied, It was ordered by Captain *Boteler*. Captain *Boteler* replied to Lieutenant *Paterſon* (I think it was, but I will not be certain), that he knew nothing at all about it. Upon that, Captain *Roſs* ſaid, " You

"ordered me to haul the Enſign down." Then Mr. *Paterſon* ſent the Midſhipman, which was young Mr. *Murray*, to hoiſt it again: Mr. *Murray* came upon Deck, but who gave Orders for him not to hoiſt it, I will not be ſure. I do not know any Thing more than the Captain's ſaying, That he knew nothing of the Enſign being ſtruck, when Mr. *Kirkland* came upon Deck, for I went after the Enſign was ſtruck down upon the Main-deck; they were not agreeable to ſhorten Sail after the Enſign was ſtruck, ſo I went down upon the Main-deck to make Sail.

Q. Did you hear any Thing paſs between the Captain and Lieutenant *Kirkland*?

A. No; becauſe I was buſy abaft. I attended the Maintopgallant-braces.

Q. Did you hear any Orders to hoiſt the Enſign again?

A. No more than that the Midſhipman ſaid, Lieutenant *Paterſon* ordered him to hoiſt the Enſign, but it was contradicted again.

Q. By whom?

A. That I cannot be certain to, any more than what he ſaid.

Q. How long did you remain upon the Poop after the Enſign was ſtruck?

A. The Man who went to ſtrike it was a Marine; he caſt the Tack off inſtead of the Halyards. There was another went, whoſe Name I do not know (I knew the firſt Man); he caſt off the Halyards, and the Enſign hung, I ſuppoſe, Four Minutes, Three Parts of the Staff up: I remained upon the Poop after the Enſign was ſtruck Three Minutes or thereabouts.

Q. Was there any Firing at the Time Captain *Roſs* was called down upon the Quarter-deck by Captain *Bateler*?

A. Yes, the Enemy kept a continual Fire.

Q. Was there any Firing from the *Ardent*?

A. That I cannot be certain of.

Q. How long did that Converſation laſt?

A. I ſuppoſe not above Five or Six Minutes.

Q. Then you cannot ſay whether the *Ardent* fired any Guns during thoſe Five or Six Minutes?

A. I

A. I cannot recollect.

Q. What Part of the Poop was you upon?

A. I ſtood, as near as I can recollect, between the Mizenmaſt and the Larboard Maintopgallant-brace: I ſtood near about abreaſt of the Mizenmaſt.

Q. Did you hear this Converſation yourſelf at the Time?

A. I heard Captain *Boteler* aſk the Captain of Marines, what he thought was beſt to be done.

Q. Did you hear Captain *Roſs*'s Anſwer?

A. Yes, I heard him ſay, he did not know what was beſt to do, but he thought it beſt to ſtrike.

Q. Have you ever heard any Part of this Converſation ſince that Time?

A. Not a Word concerning it.

Q. You ſaid the Lieutenant came upon Deck, what Deck did you mean?

A. The Quarter-deck.

Q. What Lieutenant do you mean came upon the Quarter-deck?

A. Mr. *Paterſon*.

Q. At what Time was that?

A. Juſt as the Enſign was ſtruck.

Q. Was it before Mr. *Paterſon* came upon the Quarter-deck that Mr. *Murray* went aft upon the Poop?

A. I fancy Mr. *Murray* was before Mr. *Paterſon*, but I cannot be certain: I know he came running up in a Hurry to hoiſt the Enſign again.

Q. Before Mr. *Paterſon* came up?

A. No, they came together from between Decks, to the beſt of my Knowledge.

Q. Did they both come to the Poop together?

A. I do not recollect their coming upon the Poop together; but Mr. *Murray* ran up, and would have hoiſted the Enſign immediately, but it was contradicted; by whom it was contradicted, I cannot tell.

Q. Did you hear it contradicted?

A. No; I know no more of that than what he then ſaid himſelf.

Q. Did you hear any Orders given by Captain *Boteler*, that the Enſign ſhould not be hauled down without his Orders?

A. I never heard a Word about it.

Q. What Part of the Quarter-deck were Captain *Boteler* and Captain *Roſs* upon when they were converſing together?

A. I believe both were upon the Gratings, juſt before the Poop-ladder.

Q. Were any other Officers preſent at the Converſation between Captain *Boteler* and Captain *Roſs*?

A. The Maſter was on ſome Part of the Quarter-deck; I fancy he was along with them.

Q. Did you hear all the Converſation that paſſed?

A. No more than that.

Q. Was there more Converſation, though you did not hear what they ſaid?

A. There was more, I believe.

Q. Did you hear Captain *Boteler* order Captain *Roſs* to ſtrike the Enſign?

A. No, I did not; I cannot be poſitive to that.

Q. Did you at any Time hear any Orders paſs from Captain *Boteler* on the Quarter-deck to Captain *Roſs* upon the Poop?

A. I cannot ſay that I heard any.

Q. Was there any Converſation of any Kind between them in that Situation, one upon the Quarter-deck, the other upon the Poop?

A. I cannot recollect; I cannot be certain.

Q. You ſay you heard the Captain of Marines order the Enſign to be hauled down; do you recollect what were the Words he made uſe of when he gave thoſe Orders?

A. He ſaid, The Captain has ordered the Enſign to be ſtruck; and immediately *Thomas Pennington* went and caſt the Tack off.

Withdrew.

Captain Boteler *aſked the Witneſs no Queſtions.*

William

William Murray, *Midſhipman, ſworn.*

Q. How old are you?

A. Thirteen.

Q. Do you know the Nature of an Oath?

A. Yes, I do: It is to ſwear to the Truth.

Q. Do you know any Thing of the Enſign being hauled down?

A. No.

Q. Did you receive any Directions from the Lieutenant to go and hoiſt it?

A. None.

Q. Did you go upon the Poop to hoiſt it?

A. I went upon the Poop, but they would not let me hoiſt it again.

Q. Did you go to hoiſt it?

A. Yes, but received no Orders to hoiſt it.

Q. Did you go to hoiſt it of your own accord?

A. Yes.

Q. Who hindered you?

A. Two Marines.

Q. Did no Officer tell you, you was not to hoiſt it again?

A. None.

Q. How came you to think of hoiſting it without Orders?

A. Becauſe I thought we were not to be taken like Cowards.

Queſtions from Captain Boteler.

Q. Did you ever hear me ſay any Thing concerning the Colours to any Perſon?

A. I heard Captain *Boteler* tell the Captain of Marines to take care that the Colours were not hauled down.

Q. Did you hear me aſk Captain *Reſs*, who ſtruck the Enſign?

A. Yes,

A. Yes, I did.

Q. What Anſwer did he make?

A. He made Anſwer, that he did not know.

Q. At the Time of the Enſign being hauled down, did you hear me expreſs any Diſpleaſure?

A. I cannot ſay I heard Captain *Boteler* ſay any Thing about it.

Q. Did you hear me ſpeak to Captain *Roſs*?

A. Yes.

Q. What did I ſay then?

A. Captain *Boteler* aſked him, who had hauled down the Enſign: I did not hear Captain *Boteler* ſay any Thing farther; becauſe, after I heard that, I was ſent down to deſire them to ceaſe firing on the Lower-deck.

Q. Who ſent you down?

A. Captain *Boteler*.

Queſtions from the Court.

Q. Where were Captain *Boteler* and Captain *Roſs* when Captain *Boteler* gave Orders to Captain *Roſs* about ſeeing that the Enſign was not hauled down?

A. Captain *Roſs* was upon the Poop, Captain *Boteler* was upon the Quarter-deck.

Q. Where was you?

A. Upon the Quarter-deck.

Q. Where was you quartered?

A. In the Mizen-top.

From Captain Boteler.

Q. Had you any Apprehenſion that I had, at that Time, any Idea of ſtriking the Enſign?

A. No, I did not think you had.

From

From the Court.

Q. When you were ordered upon the Lower-gun Deck to tell them to ceaſe firing, had you any Orders to tell the Lieutenants to ſend the People upon Deck to make Sail?

A. No, none.

Q. How long was it from the Time of ſtriking the Enſign, until you went down upon the Lower-deck with that Meſſage?

A. To the beſt of my Recollection, Two or Three Minutes after.

Q. Did you return upon the Quarter-deck after you had delivered that Meſſage?

A. Yes, I did.

Q. What was then doing upon the Quarter-deck, when you returned upon the Quarter-deck?

A. Making Sail.

Q. Was the Pendant then flying?

A. Yes.

Q. Was it becauſe the Enſign was ſtruck, that the Firing was ordered to be ceaſed upon the Lower-gun Deck?

A. Yes, it was.

Q. After you was taken, did you ever hear any of the Officers in the Ship expreſs a Diſſatisfaction at her having been ſurrendered to the Enemy?

A. No, none.

Q. Did not you conceive that the Reaſon of the firing of the Guns being ſtopped, and the Men ordered upon Deck, was in order to make Sail, as well as becauſe the Enſign was ſtruck?

A. Yes, I did. *Withdrew.*

The Judge-Advocate acquainted the Court, that Archibald M'Intyre, *late Gunner, and* Richard North, *Boatſwain of the* Ardent, *were returned from* France, *and had arrived laſt Night at* Portſmouth, *in order to give their Evidence. Agreed to examine them.*

They were called into Court; the Order for aſſembling the Court was read; the Boatſwain was ordered to withdraw, and

Archibald M'Intyre, *Gunner, ſworn.*

Q. Where was you quartered on the 17th of *Auguſt?*

A. I had no particular Quarters; I was generally upon the Lower-deck; ſometimes I had Occaſion to go down to the Magazine.

Q. How many Rounds of Powder had you filled?

A. Twenty Rounds; that was Captain *Boteler*'s Order to me, and I complied with it.

Q. What Quantity of Wads had you?

A. There were, to the beſt of my Knowledge, Ten Rounds; we took Two Wads to each Charge.

Q. Had you proper People in the Powder-room to ſupply the Powder to the Guns?

A. The Yeoman was the principal Man that I could truſt to in the Magazine; the reſt that were quartered there were new Hands, juſt come to Sea; there was only the Yeoman and one more Man that was quartered there, that I believe had ever been to Sea before.

Q. Was the Lower-deck quite clear when you firſt went to Quarters?

A. Yes, when we were firſt called to Quarters, there was nothing there but the Cheſts, and they were put down the Hatchway immediately.

Q. Recollect if there was any Thing elſe.

A. Nothing elſe, except the Caſe Shot-boxes, which ſtood in the Midſhips, and there they remained.

Q. Was the Lower-deck ſo incumbered with Shot-boxes, as to be a Hindrance to the firing of the Guns?

A. I do not think that it was.

Q. How many Guns did you fire during the Action?

A. I cannot tell the Number that were fired.

Q. Was you ever upon the Upper or Quarter-deck, ſo as to know what was paſſing there?

A. Not

A. Not from the firſt of the Action till it was all over.

Q. Were none of your Crew quartered in the Magazine or Paſſages?

A. Not one; the Yeoman was quartered in the Magazine, he was the only one; none of the Crew were quartered in the Paſſages; they were all ſtrange young Lads, that never, I believe, ſaw a Ship before.

Q. Did you ever acquaint the Captain that you had not proper Aſſiſtants?

A. I did not; having a Quantity of Powder filled, I did not think they would be ſo much wanted.

Queſtions from Captain Boteler.

Q. Did not you find the People very awkward at their Buſineſs for want of Time to Exerciſe?

A. They were.

Q. How did the Men behave?

A. There were a great many young Hands who had never been at Sea; they were very awkward at their Quarters. From the Firſt Day we went out from *Spithead*, we exerciſed Four Guns every Day, by Captain *Botder*'s Orders; and when we went to *St. Helens*, we fired Shot. The Men were awkward, but might have been brought in, in a little Time, by being careful.

Q. From the Time I commanded that Ship, did not you find that I did every Thing that I could to bring the People forward to their Guns, as far as Time would allow?

A. To the beſt of my Knowledge, you did.

Withdrew.

Richard North, *Boatſwain, ſworn.*

Q. Where was you quartered on the 17th of *Auguſt*?

A. On the Forecaſtle.

Q. How near were you to the firſt Frigate that fired upon you?

A. About Half a Mile, I believe.

 Q. What

Q. What did you take her to be?

A. An *Engliſh* Frigate; one of Sir *Charles Hardy*'s Fleet.

Q. How long was the private Signal up before ſhe fired?

A. The private Signal was made an Hour before ſhe fired; as ſoon as we diſcovered the Fleet, we hoiſted the private Signal.

Q. According to the Situation of the Two Ships, could that Frigate ſee that Signal?

A. Our Topgallant-ſails were hoiſted; I do not know whether ſhe could ſee the Pendant, but I dare ſay ſhe ſaw the *Dutch* Jack at the Foretopmaſt-head.

Q. How did ſhe bear of you?

A. She was upon the Starboard-quarter.

Q. Was you off the Forecaſtle at all?

A. No; I was not the whole Time, from about Half after Eight till the Ship ſtruck; I was ſick in my Cabin, having a lame Leg; I went upon the Forecaſtle, where I ſaw the Frigate firſt.

Q. When you diſcovered her to be an Enemy, were your Yards ſlung, and your Topſail-ſheets ſtoppered?

A. Yes, every one of them; the Chain-ſlings to the Lower Yards, and the Butt-ſlings to the Topſail-yards; the Lanyards of our Shrouds were all rackt fore and aft.

Q. Which Way were you ſtanding when ſhe fired; to the Northward or the Southward?

A. We were going down to the *Bretagne*, taking it to be Sir *Charles Hardy*'s Ship; we went about S. W. or S. W. and by W.

Q. Then the Frigate edged away with you?

A. Yes; they had ſtretched in to the Northward before they came down; and when we were in their Wake, they bore down upon us afterwards, as we were running down upon the *French* Fleet.

Q. Did you ſee the *French* Flag?

A. We could ſee it was a Flag; and every Perſon in the Ship, I believe, thought it was Sir *Charles Hardy*'s Flag.

Q. Did you look at it with a Glaſs?

A. Moſt

A. Moſt of the Officers did; I did not.

Q. Who hauled the private Signal down the firſt Time; and at what Time was it hauled down?

A. Some of the Top Men hauled it down; but who they were particularly, I cannot ſay.

Q. Was it a Petty Officer that hauled it down?

A. Not that I know of.

Q. Was you chiefly ſitting?

A. No, I was not; I walked along fore and aft the Forecaſtle to the Gun.

Q. Did you ſee Mr. *Burgeſs* go to the Foretopmaſt-head to haul the Signal down?

A. No; I do not know that he did.

Q. Should not you have ſeen *Burgeſs* go to the Foretopmaſt-head, if he had gone?

A. He might go up without my ſeeing him; we were ſetting Sail; we reefed our Topſails as we were going down, I did not ſee him go up nor come down.

Q. Did your Topſails hoiſt cloſe up with a Reef?

A. Very near, but not quite.

Q. What was the Situation of your Ship with reſpect to the *French* Fleet when you ſurrendered?

A. We were ſurrounded; there were Two *Spaniards*, an Eighty, and a Sixty-four Gun Ship, as we took them to be, coming down right upon us, abaft the Beam; and there were Two Frigates upon each Quarter.

Q. How were they upon each Bow and ahead?

A. The *French* Fleet were to Windward of us, ſtretching in to the Northward, and ſome of the Ships edging upon us; the *Spaniſh* Fleet was to Leeward, ſtretching to the Southward.

Q. How far might the Two Fleets be aſunder?

A. They might be Three Leagues, or better.

Q. How far were the Ships to Windward?

A. I dare ſay the *Bretagne* was not more than Four Miles from us.

Q. When you ſurrendered, how many of the Enemy's Ships were upon the Weather-bow, if any were there; and how many upon your Lee-bow; and how far were they from you?

A. The *French* Frigate was broad upon our Starboard-bow, with the whole Fleet, I ſuppoſe Twenty Sail, round her; within, very likely, Five Miles of us; I dare ſay the Eaſternmoſt Ship was not Five Miles from us; the *Spaniards* were to Leeward of us upon the other Bow, and ſome of the Ships bearing upon our Quarters.

Q. Do you mean after you brought to?

A. After we hauled our Courſes up and brought to.

Q. Do you think, if you had continued Sail, and made all the Sail you could, that you could have fetched into any Shore?

A. If the Two *Spaniſh* Ships had not diſmaſted us, or hulled us, perhaps we might; but it was impoſſible to have paſſed on to Shore, without receiving the Broadſides of thoſe Two Ships. We might have run the Ship on Shore, if they had not diſmaſted us, but we could not have run her into any Port.

Q. How far from Land was you when you ſtruck?

A. Two Leagues, I ſuppoſe, from the Rocks; we might be more.

Q. At what Rate do you think the Ship was going before you ſhortened Sail?

A. I dare ſay, about Eight Knots.

Q. What was the greateſt Number of Ships you ſaw?

A. The Man at the Maintopmaſt-head ſaid he could count Sixty Sail and upwards of the Fleet; that was after we found it was an Enemy's Fleet; when we firſt ſaw them, the Man at the Topmaſt-head ſaid he could count Forty-three or Forty-four Sail.

Q. When the private Signal was made the firſt Time, and no Anſwer returned, had you made all the Sail you could in Shore, would you have been able to eſcape?

Captain Boteler *admits there was a Probability he might have eſcaped.*

Question repeated to the Witness.

A. I dare say we could, except that when they saw we had made Sail, they would undoubtedly have sent some Ships after us.

Q. After making Sail when the Ensign was hauled down, did you do it briskly?

A. Yes; we set our Foretopmast-studdingsail and Topgallant-studdingsail; the Studdingsails were all ready upon the Yards.

Q. Was the Maintopmast-studdingsail set?

A. No; it was all ready for setting; one of the Master's Mates went upon the Main-yard to set it.

Q. When the Ensign was hauled down, did not you imagine that the Ship was surrendered to the Enemy?

A. Yes; we thought the Ship was surrendered immediately.

Q. What did you imagine when you made Sail after that?

A. We thought Captain *Boteler* meant to run the Ship ashore, if he possibly could, by his giving Directions to turn the Hands up directly, and make Sail.

Q. Did not you imagine there was some Mistake in having the Ensign hauled down?

A. I heard on board the Ship that Captain *Boteler* never gave Orders to have the Ensign hauled down; but I cannot speak to that, as I was upon the Forecastle.

Q. During this Time, did all the Officers and Men behave briskly, willingly, and obedient to Orders?

A. I never saw Men willinger in my Life than they were at their Guns and at their Sails, both Officers and Men; the Foremast-men expressed themselves, that they would sooner have the Ship sink from under them, than go into a *French* Prison, to be treated as they should be there.

Q. How was the Ship manned?

A. If we had been out a Fortnight or a Month, I dare say she would have been as well manned as any Ship in the Fleet. We had a good many good Men on board; but they were Strangers to each other, some out of one Ship, and some out of another.

Question

Queſtion from Captain Boteler.

Q. From the ſhort Time you was under my Command, what was your Opinion of me as an Officer?

A. During the Time of fitting the Ship out, and the Time of going to the Fleet, I thought you did your Duty as an Officer, and a Man that regarded your Country, as much as any Man I ever ſailed with; in exerciſing the People, and getting every Thing ready for meeting the Enemy.

Withdrew.

The Judge-Advocate acquainted the Court, that all Perſons attending had been called (except Mr. Hamilton, *who unknown to him had been every Day in Court; conſequently, according to the Uſage of Courts-Martial, could not be examined); and Captain* Boteler *having no other Witneſs to offer,*

Adjourned till Monday *Morning Ten o'Clock.*

FOURTH

FOURTH DAY.

MONDAY, the 6th Day of MARCH, 1780.

THE Court met according to Adjournment.

Captain *Boteler* brought in, and Audience admitted.

Captain *Boteler*, not being prepared with his Defence, requested the Indulgence of another Day, and that he might have Leave to revise the Minutes of the Court's Proceedings in the mean time.

The Court was cleared. In a short Time it was opened, and Captain *Boteler* acquainted, that his Request for further Time was agreed to; and that he may have Leave to revise the Minutes, in Presence of the Judge-Advocate.

Adjourned till To-morrow Morning Nine o'Clock.

FIFTH DAY.

TUESDAY, the 7th Day of MARCH, 1780.

THE Court met according to Adjournment.

Captain *Bateſon* brought in, and Audience admitted.

He produced a written Defence, which he deſired might be read by a Gentleman whom he had brought for the Purpoſe. The ſame was agreed to. It was read accordingly, and is as follows:

Mr. Preſident, and Gentlemen of the Court,

AFTER the very long and minute Inveſtigation this Buſineſs has undergone, I ſhall take up as little more of your Time as poſſible; but my Situation is ſo very new, and ſo totally different from that of every other Commander whom the Chance of War has thrown into the Hands of the Enemy, that it requires I ſhould ſay ſomething more than is generally ſaid on ſuch Occaſions; and I have no Doubt but I ſhall be heard by you with Candour and Attention, not only with reſpect to myſelf, but with regard to the future Good of the Service.

It is my Misfortune, Gentlemen, to ſtand before you in a Situation no Commander of a Line of Battle Ship of this Country (as far as my Memory and Reading can furniſh me) ever ſtood before a Court; and I flatter myſelf and the Service with the pleaſing Hope, that none will again.

The great Object of my Caſe, which I conſider as ſo totally new, is compriſed in a very few Words. On the Morning of the Third Day after ſailing from *St. Helens*, in order to join the Grand Naval Armament of this Country to the Weſtward, I found myſelf, in a ſingle Ship, in the Midſt of the United Fleets of *France* and *Spain*; and that before I had

I had well got the Length of *Plymouth*, and this without having the moſt diſtant or remote Intimation at my Sailing of an Enemy's Fleet being entered or expected in the *Britiſh* Channel; and after having lain at Anchor in *Torbay* Six-and-twenty Hours of the very little Time I had left Port, to fleet and ſet up my Rigging, and having during that Period a variety of Fiſhing-boats along-ſide of me, and People from the Shore on board, without receiving the leaſt Information of any ſuch Fleet being on our Coaſt.

I flatter myſelf that this peculiar and diſtinguiſhing Mark of my Caſe muſt ſtrike every Gentleman that now ſits in Judgment upon me in the ſtrongeſt and moſt forcible Manner; and I muſt earneſtly requeſt every Member of this Honourable Court to keep this leading Idea ſtrong in his Mind, while I ſtate the Circumſtances of my Caſe in the Detail; For though I am ſatisfied in my own Conſcience, and it is in Proof before you, that I diſcharged my Duty in every Reſpect as an Officer, from my firſt Appointment to the Command of the *Ardent* to the Moment of her Surrender to the Enemy, yet I muſt obſerve, that the true Point of Time to view my Conduct from, is not the preſent, but that in which I was ſituated.

Having premiſed thus much, I proceed to ſtate the particular Circumſtances of my Caſe; and I flatter myſelf they will turn out to my Honour, and convince this Court and my Country, that no Officer commanding the *Ardent*, at the Time and in the Circumſtances I commanded her, could have done more for her Preſervation than was done by me; and that ſhe muſt, circumſtanced as ſhe was, have unavoidably fallen into the Hands of the Enemy as ſhe did, by whatever Officer ſhe might have been commanded. In ſhort, that her Capture was owing to Circumſtances not within the Reach or Power of her Commander to guard againſt.

The firſt Particular I ſhall ſtate to you, Gentlemen, is the Situation of my Ship, with reſpect to her Officers and Company, at the Time of her ſailing from *St. Helen*'s.—The ſuperior Officers were all Strangers to me, to each other, and to the Men;—a very unfortunate Circum-

ſtance this, as the Reverſe is of great Importance. But, as if this was not Misfortune enough, my Second Lieutenant, an excellent Officer, was taken from me a Day or two before I ſailed, and not replaced.

With reſpect to the Crew, it conſiſted of 500 Men; and I believe I may ſafely venture to affirm, that near 400 of them were Landſmen, not one of whom, I verily believe, had ever ſeen a Gun fired at the Time of their coming on board the *Ardent*; and here it is impoſſible for me to refrain expreſſing my Surpriſe at what came from Mr. *Kirkland*, my Third Lieutenant, on this Head, who, if my Memory ſerves me, has ſworn that there were 200 Seamen on board the *Ardent*. This Fact I not only poſitively deny myſelf, but I ſubmit it to you, Gentlemen, that it ſtands contradicted by the Evidence of every other Officer. The Remainder of the Crew conſiſted of 100 Seamen juſt returned from the *Weſt Indies*, 50 of whom I received from the *St. Alban's*, and 50 from the *Snake* Sloop. They were all deſtitute of Cloathing, and of almoſt every other Neceſſary.

I flatter myſelf, had it been my good Fortune to have had Time to have exerciſed and diſciplined my Men, my Zeal and Aſſiduity in the doing it would have made them, in a ſhort Time, an exceeding good Ship's Company; but we were ordered to Sea, and indeed captured, before there was Time even to watch, birth, and quarter them completely.

As to my perſonal Behaviour and Attention to the Men, I have no Reaſon to doubt but it would have been ſuch as I ſhould have had nothing to apprehend from a Want of their Good-will; and indeed what that could do in their Situation (but how little that is from unformed Men, you, Gentlemen, need not be told), I am happy to ſay, they appeared ready on all Occaſions to do. I have the Pleaſure to think they felt themſelves attached to me, from the Expectations they had formed from the little they had experienced of my Conduct.

On this Head I ſhall venture to obſerve to you, Gentlemen (and I know I do it to thoſe who are well able to judge of the Propriety or Impropriety of it), that it has always been a Maxim with me, that neither

neither the Rate of the Ship, nor the Complement of Men, are what conſtitute a Ship of War; but that to theſe muſt be added a due Degree of Exerciſe and Diſcipline, to make up the technical and complex Idea conveyed by that Term to the Mind of every Officer and Seaman; and I am ſure I need not add, that for the Purpoſe of Exerciſe and Diſcipline, ſome ſhort Space of Time at leaſt is abſolutely neceſſary.

It may perhaps be ſaid, other Ships have gone to Sea with Men as totally unexerciſed and undiſciplined as the *Ardent*'s were. I hope, and believe, very few have done ſo; but whether few or many, it affects not the Truth of the Maxim I have laid down; for I will venture to inſiſt upon it, with due Submiſſion to your Judgment, Gentlemen, that the Axiom is true and ſelf-evident; and I have this to obſerve in point of Fact, that whether few or many Ships have gone to Sea in the Manner the *Ardent* did, it has happened, that by a good Providence not one of them has fallen in with an Enemy, till Time had elapſed for doing that at Sea which ought to have been done in Port, and thereby the Danger attending the Meaſure avoided. The whole Force of the Objection againſt ſending Ships to Sea with Men ſo totally unformed, lies in the Danger of their falling in with an Enemy before there is Time to exerciſe and diſcipline them. I experienced this Misfortune; nay I was captured, as I have already obſerved, before my Men could be completely watched, quartered, and birthed. It is the firſt Inſtance of the Kind, and I pray to God it may be the laſt.

Gentlemen, though I flater myſelf nothing that Courage could do would have been wanting in me, in any Exigence of Service, and that my Conduct in no Inſtance would be found deficient of what might be reaſonably expected from an Officer of my Rank and Standing, and though I think highly of the Courage of the Men I commanded, yet I cannot reflect without the greateſt Concern, what might have been the Event of the *Ardent*'s falling in with a Force againſt which much might have been expected from Abilities and Courage. It was, however, my Fate to fall in with a Force againſt which nothing was to be expected from either.

Having

Having ſaid thus much, Gentlemen, on this Head, it is now neceſſary that I ſtate to you, that on finding the *Ardent* was ordered to Sea in the Condition I have deſcribed, I felt the Force of the Maxim I have laid down ſo ſtrongly, that I had a very great Inclination to have quitted the Command; and nothing but the Deſire of ſerving my Country in the beſt Manner I might be able, from Circumſtances as they ſhould ariſe, induced me to proceed to Sea: But even this I did not do till I had remonſtrated to Admiral Sir *Thomas Pye*, the Commander in Chief at this Port, on the imminent Hazard and great Impropriety of the Meaſure. Admiral *Pye* agreed with me in Sentiment, but ſaid the Orders were not his; they were thoſe of the Board of Admiralty, and there was no Doubt but they thought the Exigencies of the Service required it. I immediately applied myſelf to make the moſt of every Moment.

At *Spithead*, the 100 Seamen who were received on board from the *St. Alban's* and *Snake* Sloop refuſed to weigh the Anchor, and ran down below. I ſent for them up, and expoſtulated with them on the Impropriety of ſuch Behaviour; and told them, if they had any Grievance to complain of, they ſhould mention it to me, and they would find me very much diſpoſed to be their Friend; upon which they ſaid, they had three or four Years Wages due to them, and they inſiſted on being paid before they ſailed. I urged the Impoſſibility of obtaining that for them, our Orders being ſo very peremptory to proceed to Sea immediately; but that, as the *Ardent* would be abſent only a ſhort Time, I would on her Return apply for it: They replied, they were in total Want of Cloaths, and had not one of the common Neceſſaries to proceed to Sea with. I then told them the Purſer ſhould ſlop them, which they refuſed. Upon this I propoſed the Expedient of their being ſtopt from the Shore, and hoped they would then exert themſelves like Seamen in their Country's Service, which they aſſured me they would do, requeſting only that the Slops might not be Purſer's. I then went on Shore to the Admiral's; but he being out of Town, the Secretary and I (to avoid the Delay of ſending an Expreſs

to their Lordſhips) agreed to get ſome Tradeſman on the Spot to carry off the neceſſary Slops, as by Order of the Admiral of the Port, which Mode was adopted, the People quieted, and we got the Anchor up, and the *Ardent* proceeded to *St. Helen's*.

The *Ardent* lay at *St. Helen's* only one Day, in the Courſe of which I did every thing in my Power towards getting the Ship in Order, and exerciſed as many of the People as could be ſpared from other Objects of Duty, at Two or Three of the Guns, by firing at a Caſk; and ſuch was my Zeal to join Sir *Charles Hardy*, that I ſailed from *St. Helen's* on the ſecond Day with a contrary Wind.

We left *St. Helen's* on the Morning of the 14th of *Auguſt*, in Company with the *Stag* Frigate and her Convoy. The 16th, at Ten at Night, we anchored in *Torbay*, finding it abſolutely neceſſary ſo to do, in order to fleet and ſet up the Rigging. The *Stag* and her Convoy proceeded to the Weſtward.

The *Ardent* lay in *Torbay* till the 17th at Midnight, having been at Anchor there Twenty-ſix Hours. The only Buſineſs that employed us during that Time was the fleeting and ſetting up the Rigging fore and aft, and great Work it was to get it done in that Time. Here my Zeal to join Sir *Charles Hardy* was again unfortunate, as it made me deaf to the Entreaties of the Maſter to ſtay one Day longer, in order to put the Ship a little more to Rights; but I inſiſted, that the ſame Neceſſity which drove us from *St. Helen's*, operated againſt our remaining in *Torbay*, and that I would go to Sea immediately, and put the Ship to Rights going down Channel. Here I muſt beg you, Gentlemen, to pauſe a Moment, while I lead your Attention to a Circumſtance that will, I make no Doubt, impreſs you and my Country with the ſame Ideas of Aſtoniſhment it does me. During the *Ardent's* being at Anchor in *Torbay*, which was for no leſs Space of Time than Twenty-ſix Hours, as before ſtated, though ſeveral Fiſhing-Boats were along-ſide, and People on board from the Shore, we never received the leaſt Intimation whatever of the Enemy's Fleet being even in the Channel, and conſequently it was not known there that they had

entered

entered it; and yet, in a few Hours after I weighed Anchor, I found myſelf in the Midſt of their Fleet. My Aſtoniſhment at this Circumſtance is increaſed, and I have no Doubt but yours will alſo, from the Reflection, that the Enemy's Fleet had then been Two or Three Days off *Plymouth*, and that the *Cormorant* came from thence, and informed the *Stag* and her Convoy, that it was the Enemy's Fleet, upon which they put into *Plymouth*, and eſcaped; and I not only conceive, that there muſt have been Time to have ſent an Expreſs to me over Land after the Arrival of the *Stag*, but I have been alſo well informed, that the Maſter of a Lugger abſolutely offered to come out of the Sound, and endeavour to give the Information neceſſary to ſave the *Ardent* for One Hundred Pounds, which was refuſed, and no Offer being made, which he judged adequate either to the Riſque or Service, he relinquiſhed the Idea.

And I muſt here beg Leave further to obſerve on this Head, that in a Converſation on board the *Corona*, after my Capture, with Monſieur *Treville*, Chef d'Eſcadre of the Enemy's flying Squadron, he expreſſed the ſame Aſtoniſhment to me at the Want of Information along our Coaſt, declaring that their Fleet was off the *Lizard* four or five Days, with little Winds and Calms, and with their proper Colours flying, and that they had met with variable Winds and Calms all the Way up the Channel, and had been actually off *Plymouth* Two or Three Days before the Capture of the *Ardent*; and though it does not immediately affect my Caſe, I cannot withhold from this Court the Knowledge I acquired on board that Ship, that nothing but the contrary and variable Winds prevented the Enemy's Fleet from being at *Spithead*, and that perhaps before the Departure of the *Ardent* from thence.

I ſhall now proceed to ſtate the Particulars from the *Ardent*'s weighing Anchor in *Torbay*, which was at Midnight on the 17th, to the Surrender of her to the Enemy in the Morning. At Day-break we diſcovered a Brig, to which we gave Chace, and came up with between Seven and Eight o'Clock. She proved to be a *Dane*, and gave the Officer who went on board her no Intelligence. In about Half an Hour after, the

Man from the Maſt-head called out, that he ſaw a Fleet in W. S. W. extending to the S. E. which, as we expected every Moment to join Sir *Charles Hardy*, we made no Doubt of being the *Britiſh* Fleet; and in this Opinion we were the more confirmed by obſerving a Frigate with *Engliſh* Colours between us and the Land. I then gave Orders to bear away, and point for the Fleet. As ſoon as it became proper, I ordered the private Signal to be made, which, after flying ſome Time, was hauled down as anſwered; but Doubts ariſing whether it was really anſwered or not, I gave Orders to bear more away, that it might be more plainly diſtinguiſhed, and hoiſted it a ſecond Time, and then it was again hauled down as anſwered. And here I muſt beg Leave to obſerve, that it was not only reported to me to be anſwered, but I myſelf looked for it with my own Glaſs, and was perfectly convinced I ſaw it anſwered.

As a ſtriking Proof that it was clearly underſtood to have been anſwered, I ſhall juſt mention a remarkable Circumſtance or two. Mr. *Kirkland*, the Third Lieutenant, obſerving the private Signal flying on board the *Ardent* ſome Time after it had been hoiſted the ſecond Time, aſked the Firſt Lieutenant, with ſome Surpriſe, Why it was permitted to remain flying when it had been anſwered? This material Fact is fully and clearly eſtabliſhed in Proof before you, though Mr. *Kirkland* has ſaid he does not recollect it. This Gentleman has complained, on another Occaſion, that his Memory is very ſhallow.

Another remarkable Circumſtance is, as we approached the Fleet, Mr. *Kirkland*, the Third Lieutenant, declared he made out the *Marlborough*, and that ſhe had her lower Tier of Guns run out; upon which I ordered the *Ardent*'s Guns to be run out alſo: This Fact is alſo clearly in Proof before you. Another Circumſtance equally remarkable is, that when I conceived myſelf at a proper Diſtance, I gave Orders to look out for Sir *Charles Hardy*'s Flag, and I ordered the Ship to be brought to till it was made. Mr. *John Burgeſs*, a Midſhipman, ſoon after reported, that he had made the *Victory*, and pointed her out.

This Fact is alſo in Proof before you, not only by the Evidence of Mr. *Burgeſs*, but alſo by that of Mr. *North*, the Boatſwain, who has expreſsly ſworn, that he and all the People on the Forecaſtle ſaw the Flag, and that he and every Officer on board thought it was Sir *Charles Hardy*'s.

I then ſeeing a Frigate and Two large Ships bearing down, thought I would continue laying to, in order to receive Intelligence from them before I made ſail for the Admiral.

About Half paſt Ten o'Clock, the Frigate hoiſted *French* Colours and fired a Shot, which I returned; and this was the firſt Moment that any one Man on board the *Ardent* had the leaſt Apprehenſion of its being the Enemy's Fleet.

Theſe Facts are alſo in Proof before you, and that the Frigate approached us End-on, and was taken by every Officer and Man on board the *Ardent* for one of the Frigates of Sir *Charles Hardy*'s Fleet, until the Moment ſhe hoiſted *French* Colours and fired a Shot.

Immediately after returning the Shot, I gave Orders to down Foreſail and wear the Ship, in order to ſtand in for, and if poſſible recover the *Engliſh* Land, when the Frigate we had ſeen between us and the Shore, and Two more, came down upon our Starboard Quarter, and gave us their Broadſides, which we returned at the ſame Time. The Frigate that fired the firſt Shot, ran athwart the *Ardent*'s Stern, and raked her; upon which I gave Orders to yaw the Ship, in order to bring our Broadſide to bear upon her, which being effected, the Frigates, after receiving our Fire, dropt aſtern, and we hauled up again for the Land, making all the Sail we could with the Addition of Studding Sails, and kept as cloſe to the Wind as would permit the Studding Sails to ſtand.

Obſerving an Eighty and Sixty-four Gun Ship, which I afterwards found to be the *Corona* and the *St. Michel*, coming faſt down upon us on our Starboard Quarter, and that on our Lee-bow appeared a Cluſter of Line of Battle Ships ſtanding to the N. W. and on our Weather-bow another Cluſter cloſing with them to cut us off, and the Frigates

aſtern

aſtern raking of us, I found it impoſſible, eſpecially in the Situation of the *Ardent*'s Company, to effectuate an Eſcape; I therefore formed my final Reſolution on my Situation, which was, to continue making Sail till the *Coronn* and *St. Michel* ſhould come along-ſide and give us their Broadſides, which having received and returned in the beſt Manner I could, then, and not till then, to ſtrike the Colours and ſurrender the Ship. With this View, I directed Captain *Roſs* of the Marines from the Quarter-deck where I ſtood, he then ſtanding on the Poop, not to ſuffer the Enſign to be ſtruck by any body till my expreſs Orders ſhould be received for that Purpoſe: This is in Proof before you on the Evidence of Two Witneſſes, Mr. *Regnier* and Mr. *Murray*. Captain *Roſs* ſoon after came to me on the Quarter-deck, and begged that the Colours might be ſtruck; but I peremptorily refuſed it, and repeated my former Orders, that he ſhould not permit the Enſign to be ſtruck without my expreſs Orders: This is alſo in Proof before you, and ſworn to by Mr. *Burgeſs*.

Soon after Captain *Roſs* had left the Quarter-deck and returned to the Poop, caſting my Eye abaft, I obſerving the Enſign down; it excited my Anger very much, and after ſome ſhort Expreſſions of Indignation, I called out to Captain *Roſs*, and aſked him, if I had not given him Orders not to ſuffer the Enſign to be hauled down without my Directions. He anſwered, Yes. To which I replied, Then, Sir, who did haul it down? He ſaid, he did not know. Thus circumſtanced, had I been oppoſed to a ſingle Ship, I ſhould certainly have ordered the Enſign to be hoiſted again; but in the Situation of the *Ardent*, I judged it moſt prudent to keep the Pendant up, delay the final Surrender of the Ship, and make all the Sail I poſſibly could, in order to effect an Eſcape by any Means whatever, if poſſible; and in conſequence I immediately ordered all Hands up to make Sail, and continued to do ſo for about Three Quarters of an Hour after the Enſign was down, the Frigates continuing their Fire aſtern all the Time; but finding myſelf then completely ſurrounded, and that it was impoſſible to effectuate an Eſcape, I conſulted the proper Officers, and ordered the Pendant to be ſtruck and

the Ship brought to. At this Time the Cluſter of the Line of Battle Ships on our Lee-bow and that on our Weather-bow were ſo nearly cloſed as to render it totally impoſſible for us to paſs them or recover the Land, the *Corona* and *St. Michel* within Gunſhot of our Starboard Quarter, and the Four Frigates, Three of which were of Forty Guns, and one of Thirty-ſix, under our Stern and on our Quarters. A Situation which, circumſtanced as I was, muſt in my Opinion, and I truſt it will in yours and that of my Country, fully juſtify her Commander in the Surrender of the *Ardent*. I was at that Moment, and am now ſatisfied, that my further Perſeverance could have been attended with no other Conſequence than the introducing an unneceſſary and fruitleſs Carnage among my People. At the Time of hauling down the Pendant, we had about Seven Men killed, and Seven or Eight wounded.

I do not think the *Ardent* could have reached the Length of the Enemy's Ships ahead. The Fire of the *Corona* and *St. Michel*, and the Frigates, muſt have prevented that. They were remarkably faſt ſailing Ships, and on that account compoſed their flying Squadron. The *Ardent* (as is well known) was not in her Trim, ſhe was too much by the Stern.

Thus, Gentlemen, have I laid before you a Chain of Facts, which nothing but the minute Inveſtigation this Buſineſs has undergone ſhould have induced me to take up your Time with; and I am ſorry to ſay, though I think the Facts themſelves carry my Juſtification with them in the ſtrongeſt Manner; yet the ſame Reaſon that induced me to ſtate them to you, ſtill operates and obliges me to beg your Patience while I make a few Obſervations upon them and the Evidence before you.

As to ſmall and trivial Variations in Evidence reſpecting Diſtances and Time, they will unavoidably occur in the Courſe of every Inveſtigation of this Kind; indeed it is impoſſible they ſhould not, for the very Reaſon that it is impoſſible all Things ſhould ſtrike all Perſons alike. Theſe Variations therefore furniſh no Argument againſt the Credibility of the Witneſſes; on the contrary, they are a Proof of their Regard to Truth, that is, to the Ideas that ſtruck them; a Uniformity

in these Minutiæ would operate just the contrary Way, and prove a preconcerted, studied, and factitious Plan of Evidence. I mention this with respect to such Contradictions as may appear in the Accounts given by different Persons of the same Transaction, where they may not all precisely agree in the same Ideas respecting Distance and Time; but I am very sorry to say the Course of this Trial has furnished Contradictions of a very different Nature, and which it pains me to animadvert upon.

The first Contradiction of this Kind which I shall point out to your Attention, is that in the Evidence of Mr. *Kirkland*. He positively denies having ever asked Mr. *Paterson*, the First Lieutenant, why the private Signal was kept flying the second Time after it had been answered. In this he stands flatly contradicted, not only by Mr. *Paterson*, the First Lieutenant, to whom he spoke the Words, but by others. This Gentleman's Account of the Gunner's Crew, and several Matters in the Gunner's Department, stands also flatly contradicted, and that by the Evidence of the Gunner himself. There are many more Instances of the extraordinary Testimony given by this Gentleman; but as almost the first Words he spoke to the Court were a Declaration that he could not rely upon his Memory, I shall animadvert no more upon them, and hope that it was his Memory only that failed him.

The same Gentleman has thought proper to make an Apology for another Part of his Conduct; which, as I cannot presume his Memory to be so exceedingly bad, as not to furnish him with the true Motives of a Transaction so very recent, I am contented to give him all that Credit the Frankness of his Apology deserves; but, at the same Time, I cannot but think it something hard and peculiar, and indeed unprecedented, that a Paper drawn up for such Purpose as he hath declared before you upon Oath, at so long a Time after the Transactions had happened, and by a Man of so very inretentive a Memory, and that without any View to the Transactions themselves, further than to furnish out a mere formal Paper for the Recovery of his Wages, should be

transmitted

tranſmitted to the Preſident of this Honourable Court, with the Order for the aſſembling of the Court-Martial, as a Charge againſt an Officer of my Rank, Standing, and, I truſt, unblemiſhed Reputation; and this without any Copy being previouſly tranſmitted to me, and without my knowing even that any ſuch Paper was in Exiſtence. I have felt much on this Account. You, Gentlemen, have rejected it as a Charge; and I hope no ſimilar Production will ever in future accompany an Order for the aſſembling a Naval Court-Martial.

I now, Gentlemen, proceed to Obſervations that will pain me much indeed. I moſt ſincerely wiſh that the Courſe of the Examination had made them unneceſſary. It was my Intention to have paſſed over even the Cauſe of them in Silence, if poſſible; but the Juſtice I owe myſelf, and my own Honour, calls upon me now to anſwer the Attempt that has been made to eſtabliſh a Fact in Evidence that never had Exiſtence.

Captain *Roſs* of the Marines, in the Courſe of his Evidence, has thought proper to deny the having received Orders from me not to permit the Enſign to be ſtruck, without my expreſs Orders for that Purpoſe. In this he ſtands flatly contradicted before you in Proof, by the Teſtimony of ſeveral Witneſſes, who heard the Orders given; and I declare, upon my Honour, in the moſt ſolemn Manner, before this Court, that I gave Captain *Roſs* thoſe Orders; and that no Tranſaction of my Life ſtands clearer or ſtronger in my Memory than the giving thoſe Orders does.

Captain *Roſs* has alſo thought proper to ſay in his Evidence, that I gave him Orders to ſtrike the Enſign; but in this he ſtands wholly unſupported; no one Witneſs having ventured to follow him in that Line of Evidence; and I declare, in the ſame ſolemn Manner as I have above, that I never gave ſuch Orders to him or any other Man, and I here repeat, that the Enſign was ſtruck in direct Contradiction to my Orders.

Captain *Roſs* has alſo thought proper to ſay in his Evidence, that I called or beckoned him from the Poop to the Quarter-deck; I remember no ſuch Tranſaction; but I remember well his coming from the Poop to me on the Quarter-deck, and begging the Enſign might be ſtruck;

but

but I reſiſted the Meaſure with Vehemence, and repeated my Orders that the Enſign ſhould not be ſtruck without my particular Directions.

This, Gentlemen, is the different Account given to you by Captain *Roſs* and myſelf of ſtriking the Enſign. We will now, with your Permiſſion, ſee how the Evidence before you confirms the one or the other.

Several Witneſſes have ſworn to the hearing me give the Orders before mentioned from the Quarter-deck to Captain *Roſs* on the Poop. Captain *Roſs* himſelf admits, that after the Enſign was down I demanded to know of him who ſtruck it, though he has given a Turn to my Queſtion which carries its own Comment. Captain *Roſs* (if my Memory fails me not) ſays, he gave the Orders for ſtriking the Enſign ſtanding on the Quarter-deck: Corporal *Sims* ſwears, that immediately after the Converſation between me and Captain *Roſs* on the Quarter-deck, Captain *Roſs* came upon the Poop and ordered the Enſign to be ſtruck in my Name: Mr. *Burgeſs*, the Midſhipman, has ſworn to the Converſation on the Quarter-deck (which *Sims* diſclaims the hearing of wholly), and ſays it conſiſted of Captain *Roſs*'s begging me to ſtrike the Colours; and that I refuſed, and repeated my former Orders, not to permit the Enſign to be ſtruck; and *Sims* ſwears (as above), that immediately on Captain *Roſs*'s leaving me and coming on the Poop, he ordered the Enſign to be ſtruck in my Name. That gallant Youth Mr. *Murray* proves, that on his running upon the Poop to hoiſt the Enſign again, he was prevented by Two Marines. *Sims* ſwears, that he heard me ſay that the Enſign was ſtruck contrary to my Orders; and that finding we on the Quarter-deck were not agreeable to ſhorten Sail after the Enſign was ſtruck, he ran down upon the Main-deck to aſſiſt in making Sail. Gentlemen, Can there be a Doubt now by whoſe Order the Enſign was ſtruck?

I think I need not ſtate to this Court (if it had not been in Proof before them), that I did not conſider the ſtriking the Enſign as the Surrender of the Ship: The Reſolution I took upon it, I have before

ſtated to you, and I flatter myſelf will meet with your Approbation; no better Line of Conduct occurred to me at the Time, and I do not now ſee how I could have altered it for the better.

I ſhall take up very little more of your Time, Gentlemen, but muſt beg Leave to lead your Attention to the very preſſing Orders for hurrying the *Ardent* out of Port; and I muſt here obſerve, that ſo preſſed was I on this Head, that I received a private Letter from Admiral Sir *Thomas Pye*, urging the Neceſſity of my immediate joining Sir *Charles Hardy*, in Terms that I think not proper to be repeated in a public Court: This Idea, Gentlemen, will be neceſſary to you, becauſe, under this Impreſſion, you will ſee me with the Admiral's Secretary, ſtopping one hundred Seamen, to the Amount of ſeveral hundred Pounds, by a Slop-man from the Shore, without waiting the neceſſary Delay of an Expreſs to their Lordſhips: You will alſo ſee me under this Impreſſion, hurrying from *St. Helen's* unfit for Sea, and with a contrary Wind; and under this Impreſſion, you will alſo ſee me deaf to the Entreaties of the Maſter to wait one Day longer in *Torbay*, to put the Ship a little to Rights, declaring it muſt be done going down the Channel. You have ſeen me, Gentlemen, weigh Anchor at Midnight with this Reſolution, and you have ſeen how few Hours of Day-light elapſed before I was in the Midſt of that Fleet which appeared to me, and to every other Perſon on board the *Ardent*, to be the Fleet there was ſo much Neceſſity for us to join. I felt what might be the probable Cauſe of their being there, and was happy in a Proſpect of my joining them in Time to ſhare in that Conflict, on which the deareſt Intereſts of my Country depended. Yet, though totally without an Idea that the Enemy could be ſo high up the *Britiſh* Channel, between me and Sir *Charles Hardy*'s Fleet, I did not omit to approach them with that Caution the Service required. As ſoon as I judged myſelf within the Obſervation of Signals, I ordered the Private One to be made: The Weather was hazy, and being not certain whether it was anſwered or could be ſeen, it was hauled down, and we edged away a little to make it more conſpicuous; and ſo ſoon as we judged it could be ſeen, hoiſted

it

it a Second Time, when I here ſolemnly declare before you, Gentlemen, and before that Judge who knows all Hearts, and before whom I am ready to anſwer for the Truth of what I now aſſert, that the Signal was not only reported to me to be anſwered, but that after looking for it with my own Glaſs, I was fully and clearly convinced I ſaw it anſwered myſelf: It was then hauled down a Second Time; and this is all the Precaution, I conceive, that any Officer could have taken.

If any Member of this Honourable Court, or if any one of my Countrymen, ſhould think there is any Thing ſtrange or ſingular, that a Line of Battle Ship ſhould get into a Fleet without diſcovering it to be an Enemy's, permit me to refer him to the Inſtance of that great Commander, the late Admiral *Boſcawen*, who, returning from *America* in a ſingle Ship, not only approached and got into the Enemy's Fleet in a much more ſuſpicious Latitude than mine, but even ran along-ſide, and hailed one of the Enemy's Ships; his Men ſtanding on the Gangway. His Men were in high Diſcipline and Exerciſe; but it throwed even them in ſuch Confuſion, that it required all their Experience and Addreſs, aſſiſted by that great Naval Commander, to extricate themſelves.

Gentlemen, I may now venture to hope that I ſtand fully and honourably acquitted in your Judgment, both of approaching the Enemy's Fleet without due Precaution, and of omitting any Thing in my Power for the Preſervation of his Majeſty's Ship the *Ardent*, while under my Command; and therefore I ſubmit the whole of my Conduct, in the moſt perfect Confidence, to your Candour and Judgment.

PH. BOTELER.

The Court being immediately cleared, the Members entered into Deliberation on the Evidence before them. After ſome Time ſpent,

RESOLVED,

That it appears that Captain *Philip Boteler* did not do the utmoſt to prevent the King's Ship falling into the Enemy's Hands; and that therefore he ought to be diſmiſſed from his Majeſty's Service.

RESOLVED,

That the other Officers and Ship's Company be acquitted.

A Sentence was drawn up by the Judge-Advocate, agreeable to the ſaid Reſolutions; which being ſigned, the Court was opened, Captain *Boteler* brought in, and Audience admitted. The ſame was pronounced accordingly, and is as follows:

AT a Court-Martial aſſembled on board his Majeſty's Ship *Victory*, in *Portſmouth* Harbour, the 2d of *March* 1780, and held every Day afterward (*Sunday* excepted) till the 7th of the ſaid Month,

PRESENT,

John Evans, Eſq; Rear Admiral of the White, Preſident.

Captain *John Carter Allen*,	Captain Sir *Digby Dent*,
John Dalrymple,	*John Moutray*,
John Cleland,	*Charles Fielding*,
Samuel Thompſon,	Sir *Charles Douglas*, Bart.
John Neale Pleydell Nott,	*Samuel Granſton Goodall*,
Honourable *Keith Stewart*,	*Benjamin Caldwell*.

The Court, purſuant to an Order of the Lords Commiſſioners of the Admiralty, dated 23d *February* 1780, and directed to *John Evans*, Eſq; proceeded to inquire into the Cauſe and Circumſtances of the Capture of his Majeſty's late Ship the *Ardent*, and try her Officers and Company for their Conduct on that Occaſion; and having made a ſtrict Inquiry thereinto, and duly conſidered every Part of the Evidence;

dence; alſo what has been delivered by Captain *Philip Boteler* in his Defence; are of Opinion, That he did not do the utmoſt to prevent the Ship's falling into the Enemy's Hands; therefore adjudge that he ſhould be diſmiſſed from his Majeſty's Service; and he is hereby diſmiſſed accordingly.

We acquit the other Officers and Ship's Company.

Jn°. Evans.
Jn°. Carter Allen.
Digby Dent.
Jn°. Dalrymple.
Jn°. Moutray.
Jn°. Cleland.
Cha'. Fielding.
Sam'. Thompson.
Cha'. Douglas.
Jn°. N. Pleyd'. Nott.
S. Goodall.
Keith Stewart.
Ben. Caldwell.

Geo. Jackson,
Ju. Ad.

FINIS.

dence; all what has been delivered by Captain Philip Beaver in his Defence; are of Opinion, That he did use de due utmost to prevent the Ship's falling into the Enemy's Hands; therefore Judge that he should be dismissed from his Majesty's Service, and he is hereby dismissed accordingly.

We acquit the other Officers and Ship's Company.

Geo. Jackson,
Ja. Ad.

FINIS.